UNITED
NATIONS

E

Economic and
Social Council

Distr.
GENERAL

E/1990/5/Add.43
20 September 1999

Original : ENGLISH

Substantive session of 1999

# IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

## Initial reports submitted by States parties under articles 16 and 17 of the Covenant

## Addendum

## CHINA:
## REPORT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA */

[4 June 1999]

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*/ The information submitted by China in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.21/Rev.1).

The annexes referred to in the present report are available for consultation in the secretariat.

GE.99-44211 (EXT)

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## Introduction

On 1 July 1997, the Government of the People's Republic of China resumed the exercise of sovereignty over Hong Kong and established the Hong Kong Special Administrative Region (HKSAR). Article 12 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China - Hong Kong's constitutional document - provides that "The HKSAR shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government". Under the principle of "one country, two systems", the socialist system and policies are not to be practised in Hong Kong and the previous capitalist system and way of life shall remain unchanged for 50 years.

In accordance with the provisions of the Sino-British Joint Declaration on the Question of Hong Kong and the Basic Law, and taking into account the fact that the People's Republic of China is not yet a party to either the International Covenant on Economic, Social and Cultural Rights or the International Covenant on Civil and Political Rights, the Government of China notified the United Nations Secretary-General on 4 December 1997 of the arrangements for the HKSAR to report to the United Nations in the light of the relevant provisions of the two Covenants.

In early 1998, the Government of China notified the United Nations that the HKSAR was prepared to submit its first reports in the light of the relevant provisions of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights in 1998.

The present report is the first report on the implementation of the International Covenant on Economic, Social and Cultural Rights in the HKSAR in the light of article 16 of the Covenant. It covers the period from 1 July 1997 to 30 June 1998.

The report is compiled in accordance with the "Consolidated guidelines for the initial part of State party reports" (HRI/1991/1) and the "Guidelines regarding the form and contents of initial reports from States parties" (CCPR/C/5 Rev.2).

## Article 1
## Progress and development of democracy

1. This issue is addressed in paragraphs 1 to 5 of the report of the HKSAR on the implementation of the International Covenant on Civil and Political Rights (ICCPR1) in relation to article 1 of that Covenant.

## Article 2
## State Parties to take steps to achieve progressively the full realization of the rights recognized in the Covenant

### Human rights provisions in the Basic Law and the Hong Kong Bill of Rights Ordinance

2. The legal context in which human rights are protected is set out in Part I of this report (paras. 29-47). The following paragraphs discuss developments arising from and since the transfer of sovereignty.

### Incorporation of rights under the Covenant into domestic law

3. In paragraph 14 (a) of its concluding observations on the previous report 1/, the Committee expressed its concern that the provisions of the Covenant continue to be excluded from domestic law. The Government's position remains as explained in paragraph 2 of the previous report. That is, we recognize that the obligation imposed by subsection 1 of this article is the obligation to take steps "to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". This language acknowledges a progressive process, pursued through various means, that may be legislative or administrative. In Hong Kong, the rights in the Covenant continue to be realized through both administrative and legislative measures. A list of those measures is provided in annex 3.

### Equal Opportunities Commission

4. As foreshadowed in paragraph 8 of the previous report, the Equal Opportunities Commission was established under the Sex Discrimination Ordinance (chap. 480: see para. 5 below) and started full operation on 20 September 1996. The Commission is responsible for conducting formal investigations, handling complaints, encouraging conciliation between parties in dispute, providing assistance to aggrieved persons in accordance with the Sex Discrimination Ordinance, the Disability Discrimination Ordinance (chap. 487: see para. 8 below) and the Family Status Discrimination Ordinance (chap. 527: see para. 12 below). It undertakes research programmes and public education to promote equal opportunities.

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1/ "The previous report" refers to the third periodic report of the United Kingdom of Great Britain and Northern Ireland (Hong Kong) on articles 2 to 16 of the ICESCR which the Committee examined in November 1996.

The Sex Discrimination Ordinance

5. As explained in paragraphs 6 to 10 of the previous report, the Sex Discrimination Ordinance (SDO) was enacted in July 1995. It came into full force in 1996. The Ordinance renders unlawful discrimination on the grounds of sex, marital status or pregnancy in specified areas of activity including employment, education, provision of goods, facilities or services, disposal or management of premises, eligibility to vote for and to be elected or appointed to advisory bodies, activities of clubs and activities of the Government. It also outlaws sexual harassment. As explained above, the Equal Opportunities Commission is responsible for the implementation of the SDO. As at 30 June 1998, it had received 355 complaints under the Ordinance.

6. Since the SDO came into effect, the Government has reviewed the laws with a view to identifying provisions that provide for differential treatment of women and men. Where appropriate, legislative amendments are introduced to remove such differences. Examples are provided in annex 4.

7. In paragraph 19 of its concluding observations on the previous report, the Committee expressed the concern that in the field of employment, the Sex Discrimination Ordinance provided "relatively insufficient remedies owing to the absence of provisions of reinstatement and full recovery compensation, while both of these remedies were foreseen in the Disability Discrimination Ordinance". And in paragraph 36, the Committee urged "the amendment of the Sex Discrimination Ordinance to include provisions on reinstatement in employment as well as the removal of the current maximum amount for recovery compensation". These things were done in June 1997, with the enactment of the Sex and Disability Discrimination (Miscellaneous Provisions) Ordinance. This repealed section 76(7) of the SDO - so removing the limit on damages - and empowered the District Court to order reinstatement.

The Disability Discrimination Ordinance

8. As explained in paragraphs 15 to 16 of the previous report, the Disability Discrimination Ordinance (DDO) was enacted in August 1995. It has been in full operation since December 1996. The Ordinance provides the legal means to ensure equal opportunities for people with disabilities and to facilitate their integration into the community to the fullest extent possible. It gives people with disabilities and their associates the legal means to fight for equal opportunities and to fight against discrimination, harassment and vilification. The Ordinance makes it unlawful to discriminate against or harass people with disabilities and their associates in the areas of:

Employment;

Membership of trade unions, qualifying bodies, clubs and access to partnerships;

Education;

Access to premises;

Provision of goods, services and facilities;

Accommodation;

Sporting activities; and

Exercise of government powers and performance of its functions.

9. The Ordinance also makes it unlawful to vilify people with disabilities or their associates.

10. As explained in paragraph 4 above, the Equal Opportunities Commission enforces the provisions of this Ordinance. It also actively undertakes public education and research to promote equal opportunities for people with disabilities. In December 1996, the Commission issued a Code of Practice to provide guidance on the procedures and systems that can help to protect people with disabilities from discrimination, harassment and victimization in the workplace. Persons who have experienced these things - whether in employment or in other contexts - may complain to the Commission, which will then investigate the matter and seek to reconcile the parties. If the complaint cannot be resolved, the Commission may also provide other forms of assistance such as legal advice or legal assistance in proceedings should the aggrieved person decide to take his/her case to court.

11. As at 30 June 1998, the Commission had received 374 complaints under the Ordinance.

The Family Status Discrimination Ordinance

12. This Ordinance (FSDO) was enacted in June 1997 and came into operation in November of the same year. It outlaws discrimination against persons responsible for the care of immediate family members in areas (employment, provision of services and so forth) corresponding to those covered under the SDO. As stated in paragraph 4 above, the Equal Opportunities Commission is responsible for the implementation of the FSDO. As at 30 June 1998, the Commission had received four complaints under the Ordinance.

Discrimination on the grounds of sexual orientation and race

13. In June 1996 and June 1997 - with the object of establishing whether discrimination on the grounds of sexual orientation and race existed and, if so, their nature and extent - we conducted discrete studies and consultations on these forms of discrimination. In both cases, over 80 per cent of respondents were opposed to anti-discrimination legislation. But there was unanimous support for the use of educational means to address the issues.

14. Accordingly, we are spending some $7 million over the two years 1997 to 1999 on measures to promote equal opportunities, particularly in these two areas. Those measures include extensive publicity programmes, community participation projects and discrete codes of practice for employers and employees 2/. Concern about discrimination regarding the right to work is also discussed in paragraphs 68 to 77 below in relation to Article 6.

15. In paragraph 16 of its concluding observations on the previous report, the Committee regretted our "step-by-step" approach to the elimination of

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2/ We have introduced a similar code in relation to discrimination on the ground of age. See paragraph 76 below in relation to article 6.

discrimination: "according to which legislation for the protection of vulnerable minorities is adopted primarily on the basis of public opinion surveys, that is, based on majority views". Echoing these concerns, local commentators have said that this approach ignores the need to protect minorities from discrimination on the part of the majority. Indeed, our practice of consultations is - it is said - at fault for pandering to "majoritarian" views. It is also said that, by not legislating against these forms of discrimination, we are failing to meet our obligations under article 26 of the International Covenant on Civil and Political Rights and articles 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

16. As we have explained in paragraphs 501 to 505 of the first report on the implementation of the International Covenant on Civil and Political Rights in the HKSAR (ICCPR1) (in relation to article 26 of that Covenant), we agree that Governments should protect minorities from discrimination. This is a fundamental principle of the Bill of Rights (BOR), which binds the Government, all public authorities and their agents. It is also true that Governments must sometimes take the lead ahead of popular consensus. But, in our view, they must also be attentive to the climate of public opinion. A balance must be struck between conflicting pressures and judgements made about what is appropriate at particular times in particular places. Legislation with wide-reaching social implications requires the support of the community or it will not be effective. This is particularly true of anti-discrimination legislation, which intimately impinges on the daily lives of ordinary people.

17. The public consultations in regard to race and sexual orientation indicated that the Government could not look for adequate community support for legislation in those areas, at least for the time being. Our minds are not closed and we shall keep the situation in view. But, pending any significant change of circumstances, we will persist with our efforts to raise public consciousness of the issues.

Protection for disabled persons

The Disability Discrimination Ordinance

18. The legislative framework to protect the rights of the disabled is explained in paragraph 8 above.

Education

19. All children receive nine years' free and compulsory education 3/, irrespective of their degree of disability 4/. Disabled children are encouraged to attend ordinary schools as far as possible. The Education

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3/ In its 1997 Review Report, the Board of Education Sub-committee - which had been set up to review nine-year compulsory education - noted that the term "compulsory education" might need to be revised to avoid the negative sense of forcing the young to attend school and to signify the mission of providing universal education for all. However, we have retained the term "free and compulsory education" throughout this report with a view to article 13.2(a) of the Covenant.

4/ The Education Ordinance (Chapter 279).

Department provides support services to help them do so. These include remedial teaching, peripatetic advisory services and counselling. Some 1,236 disabled children were attending ordinary schools in the 1997-1998 academic year. But some children - because of the extent and/or nature of their disability - are unable to benefit from mainstream education even with additional support. There are 62 schools that cater for such children. A total of 7,518 pupils attended those schools in the 1997-1998 academic year.

Employment

20. Persons with disabilities have the same right to work as all other members of the community. The laws on such matters as conditions of employment, employees' compensation, safety and health, and protection of wages (see paragraphs 82 to 83 below in relation to article 7) apply to all employees, whether or not they are to any extent disabled. As explained in paragraph 8 above, the Disability Discrimination Ordinance outlaws discrimination against persons in employment on the grounds of their own or their associates' disabilities.

21. The Government is firmly committed to ensuring that people with disabilities have equal opportunities, both in the search for jobs and within their organizations once they have found employment. Disabled candidates for civil service posts are automatically selected for interview if they meet the basic entry requirements. And they are accorded priority over other candidates if they are found suitable for appointment. The Labour Department provides free employment services to people with disabilities seeking work in open employment. Sheltered workshops provide a protected and controlled working environment for those who cannot cope with the demands of the open market. The Supported Employment Service offers a half-way option, enabling disabled persons to work in an integrated open setting but with the support and guidance of managers. As at 30 June 1998, there were 6,215 sheltered workshop places and 1,010 supported employment places.

Access to premises

22. In 1997 - and in consultation with NGOs representing disabled people - the Government replaced its 1984 Design Manual: Access for the Disabled with the new Design Manual: Barrier Free Access 1997. The revised manual sets out obligatory and recommended design requirements to ensure that buildings provide proper access to - and appropriate facilities for - people with disabilities and other sectors of the community. The obligatory requirements are incorporated in regulations under the Building Ordinance (chap. 123) 5/ and in Codes of Practice issued by the Fire Services Department. The Building Authority will follow these requirements in approving plans for new - privately owned - buildings. It will also do so in approving alterations and additions to existing ones unless the owners can prove that the requirements would impose unjustifiable hardship.

23. Most government buildings are provided with access facilities for the disabled. A few cannot provide such access because of site and/or other technical constraints.

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5/ Building (Planning) Regulations, chapter 123 sub. leg.

24. The Sub-committee on Access, Recreation and Transport of the Rehabilitation Advisory Committee 6/ is an important forum for representatives of disabled persons to propose and prioritize modification works to existing government buildings. Those proposals are formulated on a yearly basis. Where - on examination - they prove feasible, they are put into effect by the Government's Architectural Services Department. Upgrading works carried out between 1987 and 1995 were effected in accordance with the 1984 Design Manual. Those undertaken from September 1998 onward will be in accordance with new standards introduced in 1997 (para. 22 above). When the Government leases offices in private buildings, it take steps to ensure that the buildings meet the current standards.

Other measures

25. Other measures taken to ensure that persons with disabilities enjoy their rights under the Covenant to the fullest possible extent are discussed in paragraphs 487 to 495 of ICCPR1 in relation to article 26 of that Covenant. These include such matters as access to education, transport, communications and social security.

Legal representation and protection

26. People with disabilities have the same legal rights as do all members of the community. Those who are mentally handicapped or mentally ill are specially protected from sexual abuse under the Crimes Ordinance (chap. 200) and the Mental Health Ordinance (chap. 136). The Rules of the High Court provide that the Official Solicitor - or some other guardian ad litem - may represent them in civil proceedings.

27. As explained in paragraph 20 of the previous report, in October 1993, a judiciary working group sought to devise immediate and practical solutions to reduce the possible trauma that mentally handicapped persons might undergo when giving evidence in criminal trials. Its 17 recommendations were outlined in the previous report. All are now in effect. Details are provided in annex 5.

Discrimination against the mentally ill

28. In paragraph 30 of its concluding observations on the previous report, the Committee noted with concern "the apparent lack of initiative on the part of the Hong Kong government to undertake public education to combat discrimination against those with mental disabilities".

29. With the utmost respect, we are unsure how the Committee came to this view. Both the Equal Opportunities Commission and the Government have taken active measures to this purpose. Since 1993, the Government has spent nearly $40 million on public education activities and publicity campaigns to promote the integration of people with disabilities and their acceptance by the community. Over two thirds of the amount has been spent on projects promoting job opportunities for the ex-mentally ill and the mentally handicapped and on fostering the acceptance of these people by the general community.

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6/ The Rehabilitation Advisory Committee and its sub-committees are serviced by the Commissioner for Rehabilitation, a Government Office under the auspices of the Secretary for Health and Welfare.

30. The annual public education programme includes television/radio campaigns 7/, complemented by simultaneous poster campaigns, television dramas, radio talks, seminars, awards to good employers of disabled persons, and so forth. Each October, the Government organizes a "Mental Health Month" to foster public awareness of mental health and the integration of ex-mental patients. And, each December, the Government sponsors district-based celebrations of "Disabled Persons Independence Day". The central message has been that mental illness is like any other illness: mental patients need time and support from other people - especially their families - to recover. Similar campaigns - promoting the integration and employment opportunities of the mentally handicapped, persons with Down's Syndrome and the chronically ill - are conducted with funding support from the Government.

31. We are conscious that some members of the community harbour deep-seated prejudices against both groups and, like other Governments, have found - in relation to this and other forms of discrimination - such prejudices cannot easily and quickly be erased. There are limits to what public education can achieve and we have occasionally, though regretfully, had to act with firmness in the face of local opposition. We have not and will not flinch from taking such action when it is right to do so. Our public education programme for the 1998 to 2000 triennium is aimed at taking the public beyond simple tolerance or condescension towards a culture in which the acceptance of the disabled, particularly those suffering from mental disabilities, is the natural and normal state of things.

32. The Committee may also wish to note that we have significantly improved the legal protections afforded to persons receiving treatment for mental illness, particularly those receiving such treatment in mental hospitals. These are discussed in detail in ICCPR1 in relation to article 9 of that Covenant.

Human Rights Commission

33. In paragraph 14(c) of its concluding observations on the previous report, the Committee "reiterated its serious concern that the Hong Kong government continues to object to the establishment of a human rights commission". The Government has carefully reconsidered the matter and concluded that its previous assessment - explained in paragraph 22 of the previous report - was correct. Human rights in Hong Kong are founded on the rule of law, an independent judiciary, a justiciable Bill of Rights to provide remedies against infringement of human rights, and a sound and comprehensive legal aid system that assures the citizen of access to the courts. These foundations have been strengthened by the constitutional entrenchment of the Covenant and the ICCPR under article 39 of the Basic Law. Additionally, comprehensive safeguards are provided by the Ombudsman's Office, the Equal Opportunities Commission, the Privacy Commissioner's Office and the legislature. The Government continues to operate in the full view of a free and active press and local and international non-governmental organizations.

34. This system has served Hong Kong well and has provided a sound framework for the protection and development of human rights in the territory. The

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7/ Referred to as "Announcements in the Public Interest" or "APIs".

Government does not see any obvious advantage in introducing a new institution such as a human rights commission 8/.

## Article 3
## Equal rights of men and women

### Convention on the Elimination of All Forms of Discrimination against Women

35. In October 1996, the Convention on the Elimination of All Forms of Discrimination against Women was extended to Hong Kong. Under the Convention, the HKSAR is obliged to respect and promote the rights of women, and to ensure the eradication of all forms of discrimination on the ground of sex. And - as explained in paragraph 5 above in relation to article 2 - the Sex Discrimination Ordinance renders unlawful discrimination on the grounds of sex, marital status or pregnancy.

36. The Government has published 22,000 copies of the text of the Convention for public distribution and posted it on the Internet. Promotional booklets (some tailored to explaining the Convention to specific readers, such as young people) have been widely distributed with a view to arousing awareness.

37. In compliance with article 18 of the Convention, we are preparing the initial report of the HKSAR on the implementation of the Convention in the Special Administrative Region. This will be submitted to the United Nations in August 1998.

38. Other matters pertaining to the equal rights of men and women are discussed in paragraphs 58 to 87 of ICCPR1 in relation to article 3 of that Covenant.

## Article 4
## Permissible limitation of Covenant rights

39. As explained in paragraph 24 of the previous report, the Government does not subject the rights provided under the Covenant to any limitations other than those determined by law. Such limitations - where they exist - are compatible with the nature of these rights and are solely for the purpose of promoting the general welfare in a free society.

## Article 5
## Prohibition on destruction of any rights and freedoms recognized in the Covenant

40. As explained in paragraph 25 of the previous report, the Government imposes no restrictions upon and makes no derogations from any fundamental human rights on the pretext that such rights are not recognized, or are only partly recognized, by the Covenant.

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8/ We made the same points to the Human Rights Committee in ICCPR 1 and in paragraphs 13 to 16 of the "Supplementary Report by the United Kingdom of Great Britain and Northern Ireland in respect of Hong Kong under the International Covenant on Civil and Political Rights" examined by the Human Rights Committee in October 1996.

## Article 6
## Choice of occupation and labour rights

41. At the constitutional level, article 33 of the Basic Law provides that Hong Kong residents shall have freedom of choice of occupation. The Government seeks to ensure this by offering free employment services to Hong Kong residents. The Local Employment Service (LES) of the Labour Department assists job-seekers to find work that best suits their interests, abilities and potential. The Selective Placement Division provides those services to people with disabilities.

42. Article 147 of the Basic Law provides that the HKSAR shall on its own formulate laws and policies relating to labour. To that end, the Government closely monitors developments - both locally and internationally - with a view to improving employees' rights and benefits, fostering harmonious labour relations, and safeguarding occupational safety and health. Labour-related policies especially those requiring changes in legislation are formulated largely on the basis of advice from the Labour Advisory Board, which comprises representatives of employees, employers and the Government.

### International Labour Conventions (ILCs): article 39 of the Basic Law

43. Article 39 of the Basic Law guarantees that the provisions of the International Labour Conventions (ILCs) - as well as the provisions of the Covenant and the ICCPR as applied to Hong Kong - shall remain in force and shall be implemented through the laws of the HKSAR.

44. Information relating to article 6 of the Covenant has been provided to the International Labour Organization (ILO) as follows:

(a) Article 22 report 1/ on the Human Resources Development Convention (No. 142) for the period 1 July 1991 to 31 May 1998;

(b) Article 22 report on the Unemployment Convention (No. 2) for the period 1 July 1993 to 31 May 1998;

(c) Article 22 report on the Forced Labour Convention (No. 29) for the period 1 January 1996 to 31 May 1998;

(d) Article 22 report on the Employment Policy Convention (No. 122) for the period 1 January 1996 to 31 May 1998;

(e) Article 22 report on the Abolition of Forced Labour Convention (No. 105) for the period 1 January 1995 to 31 December 1996; and

(f) Article 19 report on the Discrimination (Employment and Occupation) Convention (No. 111) for the period ending 30 June 1995.

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1/ The term "Article 22 report" means a report submitted to the ILO in accordance with article 22 of the Constitution of the ILO.

Employment statistics

45. Annex 6 provides statistics on employment, unemployment and underemployment in the years 1987, 1992, 1997 and 1998 (to 30 June). The unemployment and underemployment rates of the HKSAR have started to rise since the autumn of 1997 as a result of the Asian financial turmoil. The unemployment and underemployment rates for the three months April to June 1998 in the HKSAR were 4.4 per cent (seasonally adjusted) and 2.6 per cent respectively. It is anticipated that the unemployment rate will remain higher than in past years for some time. The Government has introduced a series of new measures to help the unemployed to re-enter the labour market and to provide them with more training and retraining opportunities so they can secure new jobs and retain existing jobs.

46. Some commentators have expressed concern about how the Government assesses the extent of unemployment and underemployment, and assert that we ignore evaluations made by trade unions and NGOs.

47. We believe that our methods - and the data so obtained - are rigorous, statistically sound and accurate. The definitions used in the process closely follow the standards set by the ILO and are therefore consistent with international standards and can meaningfully be compared with data produced by other economies.

48. These figures derive from the Government's quarterly household surveys. Each quarter, the Census and Statistics Department selects a representative sample of 27,000 households and interviews all members aged 15 and over. The methodology entails "rotational replication", whereby half of each quarter's sample is "revisited" in the subsequent quarter. The criteria applied in the measurement of the size of the labour force and the rates of employment and unemployment are closely modelled on those recommended by the ILO.

49. It is not true that we ignore data from other sources. Indeed, the Census and Statistics Department takes a close interest in results of surveys conducted by academic institutions, NGOs and trade unions. Where circumstances so warrant, the Department evaluates the methodology of such surveys against established professional standards and provides feedback to their authors on what that evaluation reveals. Generally speaking, many of the surveys in question are "snapshot" polls of small samples that have not been rigorously selected. Few, if any, are conducted diachronically or cover samples of comparable size to those regularly covered by the Government. For these reasons, we are confident that our surveys - and their findings - will stand assessment against those conducted by other bodies.

Employment services

50. The LES assists local people to find work. There is no charge for this service. It comprises the:

(a) Semi self-help service: clients select vacancies on display or through self-service touch-screen computers and seek assistance from counter staff for referrals to job interviews. Priority is accorded to clients referred by the Social Welfare Department or by NGOs. These include such people as older job-seekers, applicants receiving comprehensive social security assistance, and single parents;

(b) Job Matching Programme: this is a more personalized and intensive placement service. It includes in-depth interviews, counselling, job matching and, where appropriate, referrals to tailor-made retraining courses under the Employees Retraining Scheme (para. 58 below); and

(c) Outreaching Placement Service: this is an "on-the-spot" registration service at the workplace for workers affected by major retrenchments.

51. The LES scrutinizes all vacancy orders to ensure that there are no discriminatory requirements, such as restrictions on sex or age. Some 96,627 job seekers registered with the LES in the first six months of 1998. Of these, 22,510 were women aged 30 or above, 3,845 (17.1 per cent) of whom were offered employment.

52. The Labour Department's Selective Placement Division provides free employment counselling and placement services to persons with physical or mental disabilities and the ex-mentally ill.

Protection of employees against unreasonable dismissal

53. In paragraph 21 of its concluding observations on the previous report, the Committee expressed the concern that Hong Kong labour legislation did not provide protection against unreasonable dismissal. Local commentators have expressed the same concern. In June 1997, we introduced provisions under the Employment Ordinance to the effect that employees may claim for remedies against their employers for unreasonable dismissal if (a) they have been employed under continuous contract for a period of not less than 24 months; and (b) they have been dismissed without valid reason.

54. Where unreasonable dismissal is established, the Labour Tribunal may order reinstatement or re-engagement subject to the mutual consent of the parties 2/. If no such order is made, the Tribunal may make an award of terminal payments (to be paid by the employers) as it considers fair and appropriate.

55. Where it is established that dismissal was both unreasonable and unlawful 3/, employees may be awarded compensation up to a maximum of $150,000

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2/ Such orders will only be made if both parties consent. This is because most Hong Kong businesses are small establishments. Compulsory reinstatement or re-engagement without acceptance by both parties would neither be practicable nor conducive to harmonious labour relations.

3/ Dismissal in the following circumstances contravenes the specified provisions of the Employment Ordinance (Chapter 57), the Factories and Industrial Undertakings Ordinance (Chapter 59) or the Employees' Compensation Ordinance (Chapter 282):

(a) Dismissal after the employee has served a notice of pregnancy to the employer;
(b) Dismissal for trade union membership and activities;
(c) Dismissal whilst the employee is on paid sick leave;
(d) Dismissal by reason of the giving of evidence or information by an employee in any proceedings or inquiry in connection with the enforcement of labour legislation, industrial accidents or breach of work safety

when there is no order for reinstatement or re-engagement and irrespective of whether or not there is an award of terminal payments.

New arrivals from mainland China

56. In paragraphs 89 and 90 of the previous report, we explained the circumstances of the (then) 40,000 mainland Chinese people arriving each year for permanent settlement. That number is now 55,000, some 20 per cent of whom do not speak Cantonese. They need assistance in adapting to local conditions. The Government provides this in several areas. One such area is the search for employment. During the period 1 July 1997 to 30 June 1998, a total of 7,695 such persons registered for employment assistance and 1,154 placements were attained.

57. In September 1997, the Labour Department established an Employment and Guidance Centre for New Arrivals 4/. This provides a full range of tailor-made services, including intensive job matching and referrals, provision of labour market information, employment counselling and briefing on employment conditions.

Employees retraining

58. In paragraph 31 of the previous report, we explained the legislative framework and functions of the Employees Retraining Fund 5/ which is administered by the Employees Retraining Board. Essentially, the Fund finances a scheme for retraining workers affected by economic restructuring. Under the scheme, displaced workers learn how more effectively to seek re-employment and acquire new skills. Trainees "graduating" under the scheme receive placement assistance and follow-up counselling. Between late-1992 (when it was first established) and 30 June 1998, the Board provided retraining for 236,927 persons. The average placement rate is around 70 per cent.

Training of new arrivals

59. The Employees Retraining Ordinance was amended in January 1997 to enable new arrivals (among others) to take full advantage of the retraining programmes. The "Job search skills course for new arrivals" - a full-time, purposed-designed programme that lasts one week - has attained an average placement rate of about 84 per cent. By 30 June 1998, some 4,744 new arrivals had completed various retraining courses.

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regulations; and

(e) Dismissal of an injured employee before the parties have entered into an agreement for employee's compensation or before the issue of a certificate of assessment.

4/ Defined as residents who have lived in Hong Kong for less than seven years.

5/ Established under section 6(1) of the Employees Retraining Ordinance (Chapter 423).

Long-term strategy

60. To address the changing needs of the local workforce in the rapidly changing economic environment, the Board is developing market-driven programmes to suit the needs of employers, particularly small and medium-sized enterprises.

Action against illegal workers

61. Illegal workers remain of concern, particularly in view of the threat they pose to the livelihood of Hong Kong workers. Labour Department officers frequently inspect places of employment to check employee records and proof of identity as required under the Immigration Ordinance 6/. In the first half of 1998, labour inspectors conducted over 77,500 such inspections, checked the records of over 166,000 employees and referred 377 suspected illegal workers to the Immigration Department for further investigation.

62. The task of combating the employment of illegal workers falls mainly to the Immigration Department. The Department's Immigration Task Force, formed in 1994, conducts regular operations at places of employment - such as markets, fast food shops, restaurants, shops, construction sites and factories - where there are opportunities for illegal work. The statistics are as follows:

| | 1994 | 1995 | 1996 | 1997 |
|---|---|---|---|---|
| Operations | 1,074 | 2,160 | 1,618 | 1,897 |
| Illegal workers arrested | 5,403 | 5,833 | 4,560 | 3,992 |
| Employers arrested | 1,416 | 2,302 | 1,705 | 1,303 |

63. Thus, there has been a steady decline in the number of arrests since 1995. This indicates that enforcement is proving effective and that a deterrent effect is being achieved. These efforts are complemented by publicity initiatives to raise awareness of the problem. The public is encouraged to report suspected cases of illegal employment: a hotline and fax-line are available for this purpose.

Prohibition of employment of children

64. The Employment of Children Regulations 7/ make it an offence to employ any child who is under 15 years of age in the industrial sector, other than in a restaurant or similar establishment. Subject to certain restrictions on working hours, children aged between 13 and 15 years who have completed three years of secondary education (a total of nine years full-time schooling) may be employed on a full-time basis in the non-industrial sector, with the consent of their parents. If they have not completed three years of secondary schooling, they may

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6/ Section 41 of the Immigration Ordinance (Chapter 115) provides that any person who contravenes a condition of stay in force in respect of him commits an offence. Offenders are liable to a fine of up to HK $50,000 and imprisonment for two years. Employers of illegal workers commit an offence under section 17I of the Ordinance and are liable to a fine of $350,000 and imprisonment for three years.

7/ Subsidiary legislation under the Employment Ordinance.

be employed only as part-time workers during school terms. In no case may children aged between 13 and 15 years who have not completed three years of secondary schooling be employed in any occupations prohibited in the Regulations. The aim is to prohibit employment which would interfere with schooling or would endanger children's moral development and physical health. Contravention of the Regulations carries a maximum fine of HK$ 50,000. The penalties for breaches of different provisions of the Regulations and related prosecution statistics are set out in annex 7.

Importation of labour

65. In paragraphs 28 and 29 of the previous report, we explained that sustained economic growth had led to labour shortfall and bottlenecks in certain sectors. Those bottlenecks, if not addressed promptly, might slow the rate of economic growth and, in consequence, reduce prosperity in the long term. The Government therefore allowed importation of labour on a limited scale and under strict controls. There are two schemes for this purpose:

(a) Supplementary Labour Scheme: in principle, this permits the importation of workers by employers from different industries who can demonstrate a genuine need and who can prove that they have made every effort to give priority to local workers. There are no industry specific quotas. Such application is considered on its own merits. As at 30 June 1998, some 3,600 workers were employed under this scheme; and

(b) Special Labour Importation Scheme for the New Airport and related projects: this permits importation of construction workers up to a prescribed quota. The scheme is running down as the new airport has been completed and the projects are near completion.

66. Some commentators have questioned the continuation of those schemes, particularly at a time when Hong Kong has moved into economic recession and local workers have been losing their jobs. The fact is that the number of workers employed under the Supplementary Labour Scheme is extremely small. As at 30 June 1998, they comprised just 0.1 per cent of the 3.2 million people working at the time. The jobs that they were doing were ones that local workers were unable or unwilling to take, either because the nature of the jobs did not appeal to them or because they lacked the necessary skills. Without the imported workers, the organizations that employ them might have had to cease operation with consequential losses of jobs for local workers. Operational experience has shown that importation of labour has helped create jobs for - and facilitated the transfer of skills to - local workers.

Task Force on Employment

67. The Government formed the Task Force on Employment in May 1998 to address the problem of rising unemployment. It comprises representatives of employers and employees, academics, training institutions and senior government officials. Its task is to explore ways of facilitating job creation in the private sector. At the same time, the Government is taking steps to create jobs by accelerating public works projects, strengthening and improving the Labour Department's employment and job matching services (see para. 50 above), enhancing vocational training and retraining for those who have lost their jobs, promoting further education and tightening measures to combat illegal employment.

Right to work: concerns about discrimination

68. In paragraph 15 of its concluding observations on the previous report, the Committee expressed the concern that the Sex Discrimination Ordinance "(did) not protect those individuals whose right to work (was) violated by inappropriate account being taken of their private sex life".

69. Following the studies of discrimination on the grounds of sexual orientation and race (see paras. 13-17 above in relation to article 2), we have been tackling these issues through public education, which includes the publication of discrete codes of practice for employers and employees.

70. In the same paragraph, the Committee "further consider(ed) it a serious matter that women above the age of 30 suffer(ed) discrimination in employment". In paragraph 20, the Committee expressed particular concern "about the significant numbers of women who are thereby forced out of the labour force and must sometimes resort to precarious activities". Similarly, local commentators have expressed the concern that older workers 8/ - particularly older women - are disproportionately affected by economic restructuring and have greater difficulty than others in finding new jobs. Some maintaining that age discrimination is a major difficulty that particularly affects women aged 30 and above.

71. The experience of Hong Kong's Labour Department does not support that view. There is no strong evidence that unemployment amongst middle-aged women (and other older workers) is due to age discrimination. Rather, the problem is that many such workers - who have spent most, if not all of their working lives in the manufacturing sector - lack the qualifications and skills required in a climate of rapid economic restructuring 9/. These factors may have given the impression that large numbers of women have been losing their jobs as a result of sex and age discrimination. In fact, the unemployment and underemployment rates for women are - and have long been - lower than those for men.

72. As we have explained in paragraph 499 of ICCPR1 (in relation to article 26 of that Covenant), statistics published by the Census and Statistics Department (annex 8) indicate that in the first quarter of 1998 the unemployment rates for the 30 to 39 and 40 to 49 age groups were respectively 2.3 per cent and 2.9 per cent. The rate for workers aged 20 to 29 was 3.8 per cent. This trend persisted (though the numbers increased) into the second quarter, when the rate was 3.1 per cent for the 30 to 39 age group and 4.2 per cent for the 40 to 49 age group. That for workers aged 20 to 29 was 4.8 per cent.

73. These figures do not suggest that the position of older workers is worse than that of younger ones. Nor are women worse off than men: the second quarter rate was 2.5 per cent for women aged 30 to 39 and 3.8 per cent for those aged 40 to 49. The corresponding rates for men in the same age groups were 3.6 per cent

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8/ In this context, "older workers" are those aged 35 or above.

9/ At the time this report was drafted, Hong Kong's economy was in recession and structural unemployment was increasing to unprecedented levels (that were still modest by international standards). The measures being taken to address these problems and to help displaced workers to find new jobs are discussed in paragraph 50 above.

and 4.4 per cent respectively. The records of the Labour Department also show that the placement rate for job-seekers of this age group was essentially the same as that for all job-seekers irrespective of age.

74. These indications have been affirmed by the experience of the Labour Department's conciliation service. At the time of finalizing this report, the Department had received only one complaint in relation to age discrimination in employment.

75. Some commentators have expressed the concern that older workers - particularly middle-aged single parents - have been more seriously affected than most by the current economic recession. As explained in paragraph 12 above in relation to article 2, discrimination on the ground of family status is illegal. Persons who consider that they have been subjected to such discrimination have a right to redress under the Family Status Discrimination Ordinance.

76. The Government is committed to eliminating all forms of discrimination in employment, including age discrimination. While there is no legislation forbidding age discrimination in the HKSAR, there is a sustained programme of public education, publicity and self-regulation. The "Practical guidelines for employers on eliminating age discrimination in employment" encourage employers to apply consistent criteria in a wide range of aspects of employment (such as recruitment, training, promotion, dismissal and so forth). Such criteria should not relate to age unless age is a genuine occupational requirement.

77. Additionally, the Government has introduced measures to eliminate discriminatory practices in recruitment. All vacancy orders received by the LES of the Labour Department are scrutinized carefully to ensure that they do not impose unfair restrictions. The Labour Department has also extended its voluntary conciliation service to complaints related to age discrimination in employment.

## Article 7
## Right to enjoy just and favourable conditions of work

### List of reports on relevant ILCs

78. Information relating to this article was provided in the following reports to the ILO:

(a) Article 19 report 1/ on the Minimum Wage-Fixing Convention (No. 131) for the period ending 31 December 1990;

(b) Article 22 report on Working Environment (Air Pollution, Noise and Vibration) Convention (No. 148) for the period 1 July 1989 to 30 June 1993;

(c) Article 22 report on the ILO Weekly Rest (Industry) Convention (No. 14) for the period 1 July 1993 to 30 June 1994;

(d) Article 22 report on Radiation Protection Convention (No. 115) for the period 1 July 1990 to 30 June 1994;

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1/ See also footnote 1/ under article 6.

(e) Article 19 report on Discrimination (Employment and Occupation) Convention (No. 111) for the period ending 30 June 1995;

(f) Article 22 report on the Holidays with Pay (Agriculture) Convention (No. 101) for the period 1 July 1994 to 31 December 1995; and

(g) Article 22 report on the Labour Inspection Convention (No. 81) for the period 1 January 1995 to 31 December 1996.

Fair remuneration

79. In paragraph 17 of its concluding observations on the previous report, the Committee expressed the concern that "the principle of equal pay for work of equal value as elaborated in the non-binding Code of Practice of the Sex Discrimination Ordinance (had) not been reflected in Hong Kong labour law, thus giving rise to discrimination against women".

80. The Government is committed to the principle of equal pay for equal work and encourages all employers to share this commitment. This does not mean that it considers that all employees should be paid the same wage or salary regardless of their performance or productivity. Rather, it means that all employees are entitled to the terms and conditions of employment commensurate with their rank, duties, ability, seniority, experience and so forth.

81. The Sex Discrimination Ordinance outlaws sex discrimination in all areas of employment, including terms and conditions of work, recruitment, promotion, staff transfers, or training. It is left to the courts to determine whether, in a particular instance, the work undertaken by a female plaintiff is equal - or of comparable value to - that of a male colleague with whom she wishes to be compared. In arriving at their decision, the courts might take account of the Code of Practice on Employment. At the time of drafting this report, a study on the subject of equal pay for work of equal value (commissioned by the EOC) was in progress. This is expected to be finished within the 1998-1999 financial year 2/.

82. The position is similar in relation to the criteria for promotion. The Sex Discrimination Ordinance makes it unlawful for employers to discriminate on the ground of sex when promoting, transferring, or training employees. The Disability Discrimination Ordinance makes the same provisions in respect of disabled employees. As explained in paragraph 38 of the previous report, the criteria for promotions are determined by employers and vary between industries. They include qualifications, experience (seniority) and competence.

83. In paragraph 19 of its concluding observations on the previous report, the Committee expressed the concern that in the field of employment, the Sex Discrimination Ordinance provided "relatively insufficient remedies owing to the absence of provisions of reinstatement and full recovery compensation, while both of these remedies were foreseen in the Disability Discrimination Ordinance". And, in paragraph 36, the Committee urged "the amendment of the Sex Discrimination Ordinance to include provisions on reinstatement in employment as

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2/ The Government's financial year begins on 1 April and ends on 31 March of the following year.

well as the removal of the current maximum amount for recovery compensation". These things are addressed in paragraph 7 above in relation to article 2.

Employees rights and benefits

84. The Employment Ordinance (Chapter 57) provides minimum standards in respect of such things as rest days; statutory holidays; paid annual leave; sickness allowance; maternity protection; severance payment; long service payment; termination of employment contract; protection against anti-union discrimination; and protection against unreasonable dismissal, unreasonable variation of the terms of employment contract and unlawful dismissal. The Ordinance also provides that any term of a contract of employment that purports to extinguish or reduce any right, benefit, or protection conferred upon the employee by the Ordinance shall be void.

85. Compensation for work-related accidents and diseases is discussed in paragraphs 172 to 177 below in relation to article 9.

Observations by the Committee

86. In paragraph 21 of its concluding observations on the previous report, the Committee expressed the concern that Hong Kong labour legislation did not provide protection against unfair dismissal; nor did it provide for a limitation on hours of work, for a paid weekly rest period and compulsory overtime pay. This situation was, the Committee said, a major hindrance to the enjoyment of just and favourable conditions of work. And, in paragraph 38, the Committee recommended a review of government policy in relation to unfair dismissal, minimum wages, paid weekly rest time, maximum hours of work and overtime pay rates. Local commentators have echoed these comments.

87. Taking the Committee's observations seriatim:

(a) Unfair dismissal: this matter is discussed in paragraphs 53 to 55 above in relation to article 6.

(b) Hours of work: the working hours of young workers employed in industry are regulated by statute (see annex 9). That issue and other protections afforded to young workers are addressed in paragraph 278 below in relation to article 10. Currently, there are no statutory limitations on the working hours of adult workers. Those have been considered to be part of the terms and conditions of employment that, like wages, are matters for direct agreement between employers and employees. However, the Government acknowledges that adequate rest breaks are necessary after prolonged periods of continuous work in order to safeguard the safety and health of workers. At the time of drafting this report, we were consulting employers and employees on the way forward.

(c) Rest days and statutory holidays and paid annual leave: Part IV of the Employment Ordinance entitles employees on continuous contract of employment 3/ to one rest day in every period of seven days. Employers must

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3/ An employee who works continuously for the same employer for four weeks or more - and for at least 18 hours in each such week - is considered to be working under continuous contract.

not compel employees to work on rest days except in the event of a breakdown of machinery or plant or in any other unforeseen emergencies. The Ordinance does not prescribe rates of rest day pay. Those are determined by the terms of the individual employment contract. Other legal protections of the right to rest are:

(i) Statutory holidays: Part VIII of the Employment Ordinance provides that employees are entitled to 11 statutory holidays a year. The number will increase to 12 from 1999 by the addition of a statutory holiday on Labour Day (1 May). Employees who have been employed under continuous contract for three months or more immediately preceding a statutory holiday are entitled to be paid for that holiday at normal wage rates. The Ordinance does not permit payment in lieu; and

(ii) Paid annual leave: Part VIIIA of the Employment Ordinance provides that employees are entitled to annual leave with pay after every period of 12 months served under continuous contract with their employers. Entitlement to paid annual leave ranges from seven to 14 days according to length of service. Any rest day or statutory holiday falling within a period of annual leave will be counted as annual leave and another rest day or holiday must be appointed. Employment contracts must not include terms or conditions that purport to forego any or all of the employees' annual leave entitlement. Employees are entitled to pro-rata annual leave pay on completion of three - but less than 12 - months'service in a leave year if their employment contracts are terminated for whatever reasons, excluding summary dismissal due to serious misconduct.

Annexes 10 to 12 set out the penalties for breaches of these provisions and prosecution statistics relating to them.

(d) Overtime pay: the law does not specifically require employers to pay their employees for overtime work. Overtime payment and the rates for it are matters that - like wage/salary rates themselves - are agreed between employers and employees in the light of the market conditions. Payment for overtime work is common practice. The rates for it vary between occupations and with industries. In 1997, the Employment Ordinance was amended to provide that overtime pay, if any, should expressly form part of wages. And it must be included in "wages" for the calculation of various statutory entitlements if it is of a constant character or if its monthly average over the past 12 months is equivalent to, or more than, 20 per cent of the average monthly wage during the same period; and

(e) Minimum wages: the Employment Ordinance provides statutory minimum standards of employment rights and benefits (see para. 95 below). But there is no statutory minimum wage. Remuneration for local employees is determined by individual agreements between employers and employees and is subject to the market forces of supply and demand for labour. Hong Kong is a free market economy in which employers and employees freely negotiate the level of wages.

Essentially, in common with most mainstream economists 4/, we consider that minimum wages are economically unsound. We have, it is true, made a special exception for a few particularly vulnerable groups - foreign domestic helpers and imported workers - for the reasons in paragraphs 88 and 94 below. We are aware that minimum wage laws have long been in place in other free market economies. But most of these laws were set up against special historical and political backgrounds, rather than for economic reasons. Recently, most of the economies concerned have increasingly relaxed labour market rigidities. We see no reason for Hong Kong to move in the opposite direction.

Imported workers and foreign domestic helpers

Foreign domestic helpers

88. As at 30 June 1998, some 177,548 people - mostly women - were working in Hong Kong as foreign domestic helpers. About 80 per cent of them were from the Philippines, 16 per cent from Indonesia and 3 per cent from Thailand. Most of the remaining 1 per cent were from South Asia. Uniquely for Hong Kong, employers of foreign domestic helpers are required to pay a minimum allowable wage, currently HK$ 3,860 a month. This is set at a level broadly comparable with the current market rate for local workers with similar duties. One purpose of this minimum wage is to protect a particularly vulnerable category of workers from exploitation. Another is to ensure that local workers are not undercut by foreign labour. Employers must also provide free accommodation and food, free medical treatment and return passage to the helpers' place of origin upon expiry or termination of employment contracts. Helpers enjoy the same rights to statutory holidays and weekly rest as do other people (see para. 87 above).

89. Like other imported workers, foreign domestic helpers are informed of their legal and contractual rights and obligations through the educational and publicity measures of the Labour Department.

90. In paragraph 14 (f) of its concluding observations on the previous report, the Committee expressed the concern that the "two-week rule" imposed upon foreign domestic helpers upon expiration of their contracts continued "to hinder their enjoyment of their economic, social and cultural rights". Echoing this concern, local commentators have also said that a government decision - taken in February 1998 - to freeze the minimum wage at its existing level infringed the rights of foreign domestic helpers.

91. We explained our position in relation to the two-week rule in paragraphs 46 to 48 of the previous report, where we responded to the Committee's recommendation - in its concluding observations on the United Kingdom's second report under the Covenant in relation to Hong Kong - that the rule be repealed. Essentially, we continue to maintain that the rule is both reasonable and necessary. As previously explained, its purpose is to deter

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4/ See for example, Deere, Murphy and Welch, "Sense and nonsense in the minimum wage", in Regulation, Cato Review of Business and Government; Kaufman, The Economics of Labor Markets, Dryden Press, 1991, pp. 252-258; The Economist, 27 June 1998, p. 88; Lipsey, Economics (Eleventh edition), Harper Collins College Publishers, 1995, pp. 326-327; Begg, Fischer and Dornbusch, Economics (Fifth edition), McGraw-Hill, 1997, pp. 177-178; McConnell and Brue, Economics (Thirteenth edition), McGraw-Hill, 1996, pp. 569-570.

foreign domestic helpers from overstaying and taking up unauthorized work. And the rule continues to be exercised flexibly to take account of genuine grievances in special cases.

92. The Government does not share the view that the current "freeze" of the minimum allowable wage in any way diminishes the rights of foreign domestic helpers. The level of this wage is reviewed annually in the light of the wage movements in comparable sectors, the situation in the local economy and the value of the wage in terms of the local currency in the helpers' countries 5/. The minimum allowable wage is precisely that: a minimum. Employers can - and often do - pay more. Additionally, as stated above, foreign domestic helpers enjoy contractual benefits such as free food, medical treatment and accommodation. The "freeze" was imposed in the context of the developing economic recession. The wages and salaries of other groups - including senior civil servants - have since been similarly frozen. Indeed, some have been reduced.

93. We will review the minimum allowable wage at the end of 1998, taking into account the prevailing economic situation. We will announce the level for 1999 early that year.

Imported workers

94. As at 30 June 1998, some 5,350 persons were working in Hong Kong under the labour importation schemes (see para. 65 in relation to article 6). Most were employed on two-year contracts. They are informed of their rights and benefits under the law through pamphlets, mandatory briefings and a telephone enquiry service with pre-recorded messages in five dialects/languages. Their employers are required to pay them wages at a rate comparable to local workers in similar positions, to provide them with free medical treatment and with accommodation of a prescribed standard.

Legal protections

95. Imported workers and foreign domestic helpers enjoy the same rights and benefits under labour legislation as local workers. These include the protections afforded by the Employment Ordinance and the Employees' Compensation Ordinance (see paras. 162-172 below in respect of article 9 6/). And they enjoy the same access to the Labour Department's conciliation services in the event of disputes with their employers. Like local workers, they have ready access to the Minor Employment Claims Adjudication Board or the Labour Tribunal

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5/ The Asian financial crisis has resulted in significant falls in the values of various regional currencies. But the Hong Kong dollar is "pegged" to the United States dollar at a fixed rate of exchange. This has meant that the Hong Kong dollars earned by domestic helpers have become increasingly valuable in relation to the currencies of the countries from which most of them come.

6/ Employees injured in the course of employment are entitled to claim compensation of up to HK$ 1.73 million for permanent total incapacity or HK$ 1.51 million for death. If their employers become insolvent, workers seek ex-gratia payments (covering wages, wages in lieu of notice and severance payment) from the Protection of Wages on Insolvency Fund (see para. 173 below in relation to article 9).

(depending on the amount of the claim and the number of claimants involved) if conciliation is unsuccessful.

96. Upon termination or expiry of their contracts of employment, imported workers and foreign domestic helpers are entitled to free return passage to their place of origin. This must be provided by their employers.

Enforcement

97. Government departments, particularly the Labour Department, vigorously enforce the rights and benefits of imported workers. Regular inspections are made of the places where they live and work to establish whether they are provided with all their legal and contractual entitlements. A 24-hour hotline provides a convenient vehicle for complaints to the Government. Unscrupulous employers may be prosecuted and/or subject to administrative sanctions. Such sanctions may include suspension from participation in the labour importation schemes. The Labour Department also investigates complaints against employers of foreign domestic helpers. Where infringements of statutory or contractual obligations are discovered, the Department will initiate prosecutions.

Safe and healthy working conditions

98. The Labour Department's Occupational Safety Officers are responsible for ensuring the safety and health of employees in factories, construction sites and in other workplaces. They do this through inspections, accident investigations, education, promotion, publicity, and enforcement campaigns. Special task forces promote specific areas of safety concern such as use of machinery, fire prevention, construction and so forth. They help industry to establish safety committees. And they assist management and employees to identify hazards at work and devise corresponding safety programmes. In the first half of 1998, there were 41,952 inspections: 26,982 of factories and other workplaces; and 14,970 of construction sites.

99. Legal protections are discussed in paragraphs 102 to 110 below.

Difficulties encountered

100. Some employers and employees are unresponsive to these efforts. And the complex sub-contracting systems in the construction and shipbuilding industries and the high mobility of industrial workers pose great difficulties for safety promotion and safety training. Annex 13 tabulates the numbers and types of occupational injuries in the years 1987, 1995 to 1997. These indicate that - despite significant progress in many areas - further efforts are necessary.

101. In 1994, the Government conducted a comprehensive review of industrial safety. The findings and recommendations of the review were published for public consultation in 1995. This led to the adoption - in 1996 - of a new approach to health and safety in the workplace. Employers and employees are now encouraged to manage safety through self-regulation, education, training, the promotion of safety concepts and a better understanding of the costs of accidents. The Government will introduce legislation on safety management in early 1999 and will take enforcement action against establishments where self-regulation is not working.

Prevention of accidents and diseases in the workplace: legal protections

The Factories and Industrial Undertakings Ordinance (Chapter 59)

102. This is the principal law on industrial safety. It applies to industrial undertakings such as factories, mines, quarries, shipbuilding, construction, and catering establishments. The Ordinance and its subsidiary legislation prescribe requirements for the prevention of accidents and diseases, including detailed rules for certain trades and work processes. Inter alia, regulations under the Ordinance require that employees who work with or are likely to come into contact with dangerous substances be provided with protective clothing and equipment.

103. Annex 14 summarizes the legal provisions on the prevention of occupational accidents and diseases made under this and the Occupational Safety and Health Ordinance. Annex 15 sets out the penalties for breaches of the regulations made under these Ordinances and the prosecution statistics relating to such breaches.

Occupational Safety and Health Ordinance (Chapter 509)

104. Enacted in 1997, this Ordinance extends the legislation on occupational safety and health to workplaces in all sectors of economic activity, both industrial and non-industrial. It empowers the Government to make subsidiary regulations prescribing minimum safety and health standards in places of work.

Boilers and Pressure Vessels Ordinance (Chapter 56)

105. As its name indicates, this Ordinance and its subsidiary legislation regulate the standards and operation of equipment such as boilers, pressure vessels and steam containers. Such equipment must be registered with the Boilers and Pressure Vessels Authority and examined initially and periodically by examiners appointed by the Authority. As at 30 June 1998, there were approximately 51,000 items of registered pressure equipment in Hong Kong.

106. The Boilers and Pressure Vessels Division (BPVD) of the Labour Department administers the Ordinance and its subsidiary legislation. The Ordinance authorizes officers of the BPVD to conduct regular spot checks to ensure that pressure equipment in use meets the required safety standards. They also investigate accidents and conduct examinations for the issue of certificates of competency to boiler and steam receiver attendants. They also publish literature and organize seminars to promote safety awareness.

107. These efforts have helped to bring about a 50 per cent fall in the number of accidents involving pressure equipment. There were 15 such accidents between 1988 and 1992; seven between 1993 and June 1998. At the same time, the accidents that have happened have been less serious. Those that occurred between 1988 and 1992 resulted in six deaths (five by steam receivers and one by a steam manifold) and six persons being injured, most in accidents involving steam boilers. Those that occurred between 1993 and June 1998 resulted in five persons being injured but no fatalities.

108. The causes of these accidents were:

Improper design and construction;

Improper installation;

Unauthorized modification;

Lack of - or improper - maintenance; and

Improper handling due to lack of training, insufficient instructions, poor or no supervision, negligence, or no competent person to provide direct supervision.

Merchant Shipping (Seafarers) Ordinance 1995 (Chapter 478)

109. This consolidates in a single Ordinance laws regulating the employment and conditions of work of seafarers. With some adaptation, it incorporates the requirements of the Convention on Standards of Training and Certification for Watchkeepers and various International Labour Conventions relating to seafarers. It establishes a Seafarers' Authority and Seafarers' Appeals Board. And it provides for the removal or suspension of a seafarer's registration on prescribed grounds; the qualifications, employment and discharge of seafarers; and so forth. It also prescribes standards of safety, health, welfare and working hours.

Radiation Ordinance (Chapter 303)

110. This controls the import, export, possession and use of radioactive substances and irradiating apparatus, and the prospecting for and mining of radioactive substances. Subsidiary legislation under the Ordinance contains detailed provisions on the conditions for employment of workers, handling radioactive substances and irradiating apparatus. It also provides for the control of workers' exposure to radiation, the facilities and equipment in workplaces and precautions against over-exposure to radiation.

Dangerous Goods Ordinance (Chapter 295)

111. This regulates the manufacture, possession, landing, shipment, handling storage, movement, sale and use of dangerous goods.

Employment protection

Part-time workers

112. Commentators have said that the protections offered to part-time workers are inadequate. The number of such workers is, they say, increasing as the economy moves deeper into recession.

113. Employees who work continuously for the same employer for four weeks or more - and for at least 18 hours in each of those weeks - are regarded as working under continuous contract. As such, they are entitled to statutory benefits under the Employment Ordinance subject to the satisfaction of the conditions stipulated therein. Thus, most, if not all, part-time employees are

entitled to benefits under the Employment Ordinance 7/. All employees, including part-time workers, are also eligible for compensation if they sustain injuries arising out of and in the course of employment 8/.

Prolonged lay-offs

114. The Employment Ordinance provides that persons employed under continuous contract for two years or more are entitled to severance payment in the event of prolonged lay-off. Employees are taken to be laid off if they are not provided with work or pay for more than half of the total number of normal working days in a period of four consecutive weeks, or for more than one third of the total number of normal working days in a period of 26 consecutive weeks. At the same time, the law gives employers sufficient flexibility to survive difficult periods without having to dismiss their workers.

Protection of Wages on Insolvency Ordinance 1985 (Chapter 380)

115. This provides for the establishment of a Protection of Wages on Insolvency Fund Board to administer the Protection of Wages on Insolvency Fund. All employees who are owed wages, wages in lieu of notice or severance payment - and whose employers have become insolvent - are eligible to apply to the Fund for ex gratia payment. The Ordinance empowers the Commissioner for Labour to make such payments. However, a person whose employer is an individual - and who is a member of the family of that employer and who dwells in the same dwelling as that employer - is not eligible to apply.

116. Subject to verification of applications, payment from the Fund may be made on condition that a petition for compulsory winding-up under the Companies Ordinance (Chapter 32) or a petition for bankruptcy under the Bankruptcy Ordinance (Chapter 6) has been presented against the employer. In some circumstances, the Commissioner for Labour may waive the requirement for presenting such petitions if, in her/his opinion, it is unreasonable or uneconomic to do so. But such petitions cannot be presented where the employer is an individual and the debt in question does not exceed HK$ 10,000. In the latter circumstances, the Commissioner may award the employee(s) an ex gratia payment.

117. Payments from the Fund may cover:

(a) Arrears of wages - up to HK$ 36,000 - for services rendered within four months prior to the last day of service. These include outstanding payment for annual leave or statutory holidays taken, maternity leave pay, sickness allowance and end of year payments;

(b) Wages in lieu of notice: to a maximum of one month's wage or HK$ 22,500, whichever is the lesser; and

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7/ These include rest days, holidays with pay, paid annual leave, sickness allowance, maternity protection, severance payment, long service payment, protection against anti-union discrimination, and so forth.

8/ Employees' Compensation Ordinance (Chapter 282).

(c) Severance payment of up to HK$ 36,000 plus 50 per cent of any excess entitlement.

## Article 8
## Right to trade union membership

118. Article 27 of the Basic Law provides, inter alia, that Hong Kong residents shall have the right and freedom to form and join trade unions and to strike. The right to form and join trade unions is also guaranteed under article 18 of the BOR.

### The ILCs

119. Information relating to this article was provided in the following reports under ILCs:

(a) Article 22 report 1/ on Right of Association (Agriculture) Convention (No. 11) for the period 1 July 1992 to 30 June 1994;

(b) Article 22 report on Right to Organise and Collective Bargaining Convention (No. 98) for the period 1 January 1996 to 31 December 1996;

(c) Article 22 report on Rural Workers'Organisations Convention (No. 141) for the period 1 July 1994 to 31 December 1996;

(d) Article 22 report on Labour Relations (Public Service) Convention (No. 151) for the period 1 July 1993 to 31 December 1995; and

(e) Article 22 report on Freedom of Association and Protection of the Right to Organise Convention (No. 87) for the period 1 January 1996 to 31 May 1998.

### Trade Unions Ordinance

#### The present legislative framework after the amendments to labour laws in October 1997

120. The Trade Unions Ordinance (Chapter 332) provides that any combination which has the principal object of regulating relations between employees and employers, or between employees, or between employers must be registered with the Registrar of Trade Unions. The Ordinance provides for the regulation of trade unions'internal administration and extends certain statutory immunities to registered trade unions. In 1997, the Ordinance was amended to extend to employers, employees, and members and officers of registered trade unions protections against civil suits for certain acts done in furtherance of trade disputes. Previously, such protection applied only to the registered trade unions themselves.

121. In paragraph 22 of its concluding observations on the previous report, the Committee expressed the concern that trade union rights were unduly restricted in Hong Kong. In particular, the Committee was "of the view that restrictions applied to affiliation with international trade union organizations, the

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1/ See also footnote 1/ under article 6.

prohibition on the formation of confederations of trade unions from different industries, as well as the legal right of employers to dismiss persons involved in strike activities, were incompatible with the Covenant." In paragraph 37, the Committee recommended that "the Government lift repressive provisions and limitations in relation to trade union federations, including the prohibition on establishing international affiliation". We believe that we have met these concerns (see para. 124 below). But some background information is necessary before we explain the present position.

122. In June 1997, the former Legislative Council passed several Members' Bills related to labour issues, inter alia:

(a) The Trade Unions (Amendment) (No. 2) Ordinance 1997: this relaxed controls over the activities of trade unions, including the removal of:

(i) The requirement of the Governor's (now the Chief Executive's) approval for donations to trade unions or similar organizations outside Hong Kong; and

(ii) The restriction on the use of trade union funds for political purposes and affiliation of a registered trade union with organizations established outside Hong Kong.

(b) The Employment (Amendment) (No. 4) Ordinance 1997: this gave employees a new right to make civil claims against acts of anti-union discrimination, and provided remedies including compulsory reinstatement, compensation and punitive damages; and

(c) The Employee's Right to Representation, Consultation and Collective Bargaining Ordinance: this conferred on employees:

(i) The right to be represented by a trade union on employment matters;

(ii) The right to be consulted by their employers through a representative trade union on various matters affecting their interests; and

(iii) The right to be covered by collective agreements negotiated by representative trade unions.

123. The Government reviewed these provisions in consultation with the Labour Advisory Board. The review found that:

(a) Trade Unions (Amendment) (No. 2) Ordinance 1997: the previous provisions were necessary to promote the healthy development of trade unions in the HKSAR and to ensure that the role of trade unions was confined to the promotion and protection of the welfare of their members;

(b) Employment (Amendment) (No. 4) Ordinance 1997: the protections this provided against dismissal on the ground of anti-union discrimination were essentially the same as those provided in the pre-existing Employment (Amendment) (No. 3) Ordinance 1997; and

(c) Employee's Right to Representation, Consultation and Collective Bargaining Ordinance: this had immediate and long-term implications for Hong

Kong's labour relations system and could adversely affect Hong Kong's economic competitiveness. Given the high mobility of the workforce and the predominance of small business (about 94 per cent of establishments employ less than 20 employees 2/), imposing collective bargaining by statute was - in the view of both the Government and the Board - inappropriate to the HKSAR. It has long been the Government's policy progressively to improve employees' rights and benefits in a way that is commensurate with the pace of Hong Kong's economic and social development and that strikes a good balance between the interests of employers and employees.

124. Accordingly, in October 1997, the Ordinance at (a) above was amended, and those at (b) and (c) were repealed, with the enactment of the Employment and Labour Relations (Miscellaneous Amendments) Ordinance. Some commentators consider this to be a retrograde step for labour rights. The Government disagrees. Its own review of the Trade Unions Ordinance, which was conducted in consultation with the Labour Advisory Board 3/, led to major amendments to the Ordinance 4/. Those became effective on 31 October 1997 and included:

(a) Removing the prohibition on forming trade union federations with component trade unions belonging to different trades, industries or occupations;

(b) Allowing trade unions to be members of organizations of workers, employers and relevant professional organizations in foreign countries without the need to obtain the prior approval of the Government. The provisions are in line with the relevant provisions under the International Labour Convention No. 87 on Freedom of Association and Protection of the Right to Organise;

(c) Lowering the age requirement for becoming a member of a trade union from 21 to 18; and

(d) Relaxing the requirement of voting for change of a trade union name from two thirds of all voting members to a majority of voting members or members' representatives present at a general meeting.

125. Thus, trade unions are permitted to form federations with component trade unions belonging to different trades, industries and occupations. They are free to affiliate with organizations of workers, employers or relevant professional organizations established in foreign countries. We believe that these changes meet the concerns and recommendation in paragraphs 22 and 37 of the Committee's concluding observations.

126. There is more discussion of the right to join trade unions and, generally, of the rights guaranteed by article 8 of the Covenant, in paragraphs 390 to 398 of the ICCPR1 in relation to article 22 of that Covenant.

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2/ As at 30 June 1998, there were a total of 274,027 establishments (all industrial/commercial sectors). Of these, 257,420 employed less than 20 people. (Quarterly Report of Employment, Vacancies and Payroll Statistics - June 98 published by Census and Statistics Department.)

3/ See paragraph 42 above in relation to article 6.

4/ Amended through the Employment and Labour Relations (Miscellaneous Amendments) Ordinance 1997.

Number and membership of trade unions

127. As at 31 December 1997, the number and declared membership of employees' unions in Hong Kong were:

| Economic sector | No. of unions | Declared membership |
|---|---|---|
| Agriculture and fishing | 0 | 0 |
| Mining and quarrying | 0 | 0 |
| Manufacturing | 87 | 72 617 |
| Electricity, gas and water | 4 | 2 541 |
| Construction | 22 | 25 819 |
| Wholesale, retail and import/export trades, restaurants and hotels | 37 | 52 392 |
| Transport, storage and communication | 85 | 105 242 |
| Finance, insurance, real estate and business services | 14 | 35 534 |
| Community, social and personal services | 289 | 353 763 |
| Total | 538 | 647 908 |
| Union participation rate in terms of salaried employees and wage earners | | 21.85% |

Legislative protection against anti-union discrimination under the Employment Ordinance (Chapter 57)

128. The Employment Ordinance gives all employees the right to become members or officers of trade unions, to take part in their activities outside working hours or, with their employers' consent, within working hours, to organize trade unions and to apply for their registration. Employers must not prevent or deter employees from exercising these rights. And they must not dismiss, penalize or discriminate against them for doing so. Employers who contravene these provisions shall be guilty of an offence and shall be liable on conviction to a fine of up to HK$ 100,000.

129. In June 1997, new provisions introduced under the Employment (Amendment) (No.3) Ordinance 1997 (see also para. 123 above) gave employees the right to claim remedies if they were dismissed for exercising their rights in respect of trade union membership and/or for activities within 12 months immediately before such dismissal. If their employers fail to show valid reasons 5/ for dismissal - and the dismissal is due to the employees' trade union membership and/or activities - the Labour Tribunal may order reinstatement or re-engagement,

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5/ Section 32K of the Employment Ordinance provides that it shall be a valid reason for the employer to show that the dismissal was by reason of:

(a) The conduct of the employee;
(b) The capability or qualifications of the employee for performing his work;
(c) Redundancy or other genuine operational requirements of business;
(d) Statutory requirements (that is, it would be contrary to the law if the employees were to continue in that employment); or
(e) Other substantial reasons.

subject to mutual consent by both parties, or award terminal payments to the employees. Where no order for reinstatement or re-engagement is made - and whether or not there is an award of terminal payments - the Labour Tribunal may also award the employees compensation not exceeding HK$ 150,000.

130. Additionally, and notwithstanding our reservations about compulsory collective bargaining (para. 123 above), the Government has taken various measures to encourage and promote collective bargaining on a voluntary basis. Voluntary negotiation, underpinned by the Labour Department's voluntary conciliation service, has served Hong Kong well. The average number of working days lost per year through labour disputes over the three years from 1995 to 1997 was only 0.55 day per 1,000 wage earners and salaried employees. In April 1998, the Labour Department set up the dedicated Workplace Consultation Promotion Unit to promote voluntary negotiation and effective communication between employers and employees at the enterprise level.

Provision for a cooling-off period in the Labour Relations Ordinance (Chapter 55)

131. The Employment Ordinance provides that, where an employee who has been given notice by his employer to terminate his contract takes part in a strike before the expiry of the notice, his entitlement to severance or long service payments or remedies in employment protection will not be affected by his taking part in the strike.

132. As explained in paragraph 56 of the previous report, the Labour Relations Ordinance provides that where a dispute is of such a nature and scale as to have a grave effect on Hong Kong's economy, or to endanger the lives of a substantial number of people, the Chief Executive in Council may make an order for a cooling-off period during which all forms of industrial action must be discontinued. That period shall not exceed 30 days but can be extended to a total of 60 days. To date, this power has never been exercised.

## Article 9
## Right to social security

133. Article 36 of the Basic Law provides that Hong Kong residents shall have the right to social welfare in accordance with the law. The welfare benefits and retirement security of the labour force shall be protected by law. article 145 of the Basic Law further provides that the HKSAR shall, on its own, formulate policies on the development and improvement of the previous social welfare system in the light of the economic conditions and social needs.

Overall objective

134. As explained in paragraph 58 of the previous report, the Government's social security policy is to meet the basic and special needs of Hong Kong's disadvantaged people. These include such people as the financially vulnerable, the elderly 1/ and the severely disabled. All local residents - irrespective of their sex, race or religion - enjoy the right to social security. This is achieved through a comprehensive social security system administered on an

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1/ In the context of the CSSA Scheme, the term "elderly" refers to persons aged 60 or above.

entirely non-contributory basis. The Comprehensive Social Security Assistance (CSSA) Scheme provides a safety net for those who for various reasons - such as old age, disability, temporary illness, low income or unemployment - are unable to meet the basic needs of living. The Social Security Allowance (SSA) Scheme provides assistance to the elderly and the severely disabled to meet special needs arising from old age and/or invalidity. Both schemes are non-contributory and non-statutory. They are wholly funded by the general revenue and are administered by the Government's Social Welfare Department.

Government expenditure on social security

135. In the 1997-1998 financial year, the Government spent HK$ 14,362 million on social security, including administrative costs. This comprised 7 per cent of total government expenditure and 1 per cent of the Gross Domestic Product for the year 1997. The corresponding figures for the 1987-1988 financial year were HK$ 1,846 million (4 per cent of total government expenditure in that financial year); and 0.5 per cent of GDP for the year 1987. The increase over the decade reflects improvements to the various schemes that, together, comprise the total social security "service package".

136. As at 30 June 1998, about 840,400 people, or 13 per cent of the population, were receiving payments under either the CSSA Scheme or the SSA Scheme. The corresponding figure for 1988 was 407,300 people, or 7 per cent of the population. Some 74 per cent of recipients were elderly people. There are several reasons for this increase. The principal ones include growing awareness of the availability of social security benefits (itself the result of increased publicity), improved benefits and changing attitudes towards the acceptance of public assistance.

Comprehensive Social Security Assistance Scheme

137. The CSSA Scheme is means tested. It provides cash assistance to recipients at levels which are relevant to the conditions in Hong Kong to meet their essential needs of living such as food, rent, clothing, transport. All CSSA recipients are entitled to free medical treatment at public hospitals or clinics. As at 30 June 1998, some 320,700 people were receiving assistance under the scheme.

138. In 1996, we completed a comprehensive review that sought to discover how effective the CSSA Scheme was in meeting the needs of recipients. In the course of the review, we compared the expenditure patterns of households receiving assistance under the CSSA with those of general households. And we examined the standard rates of assistance against the estimated cost of such basic needs as food, clothing, fuel and light, and so forth. In the light of our findings, we increased the standard rates for specific groups of recipients by between 9 and 57 per cent in real terms. We also increased the maximum rent allowance, introduced "flat-rate" grants for school-related expenses and two special grants for the elderly; and we relaxed the qualifying limits on assets. These changes took effect from April 1996.

139. The review also proposed that elderly CSSA recipients who chose to take up permanent residence in Guangdong 2/ should continue to receive their monthly standard rate payment and annual long-term supplement. The proposal was put into effect from 1 April 1997 and is referred to as the "Portable CSSA Scheme". As at 30 June 1998, some 1,030 recipients had taken advantage of this option.

140. As at the time of drafting this report, we were reviewing the assistance under the CSSA Scheme rendered to "employable" adults. The aim is to assist and encourage these persons to rejoin the workforce.

Eligibility for the CSSA Scheme

141. As explained in paragraph 60 of the previous report, to be eligible for CSSA, a person must have resided in Hong Kong for at least one year. In cases of genuine hardship, this criterion may be waived. CSSA recipients who are able-bodied, aged 15 to 59 and available for work, must register with the Labour Department for job placement.

Rates of assistance under the CSSA Scheme

142. As at 1 April 1998 (the beginning of the Government's financial year) the standard rates were:

| | Single person<br>HK$ per month | Family member<br>HK$ per month |
|---|---|---|
| Elderly persons aged 60 or above | | |
| Able-bodied/50% disabled | 2 555 | 2 410 |
| 100% disabled | 3 095 | 2 735 |
| Requiring constant attendance | 4 355 | 3 990 |
| Able-bodied adults aged under 60 | | |
| Single parent/family carer | - | 1 965 |
| Others | 1 805 | 1 610 |
| Disabled adults aged under 60 and in ill health | | |
| 50% disabled | 2 160 | 1 965 |
| 100% disabled | 2 700 | 2 335 |
| Requiring constant attendance | 3 955 | 3 590 |
| Children | | |
| Able-bodied | 2 160 | 1 795 |
| 50% disabled | 2 880 | 2 510 |
| 100% disabled | 3 420 | 3 055 |
| Requiring constant attendance | 4 670 | 4 315 |

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2/ Guangdong is the province of mainland China nearest to Hong Kong. Most Hong Kong residents originate from - and have family connections - there. For this reason, the "Portable CSSA Scheme" has initially been restricted to persons retiring to that province. A review of the scheme is in progress. This will examine, inter alia, the feasibility of extending it to other provinces.

In order to encourage persons receiving CSSA to become financially independent, earnings up to the equivalent of the rate for single, able-bodied adults ($1,805) are disregarded when calculating the amounts of assistance to be provided. Assets are also disregarded up to a maximum of HK$ 37,000 for a single-person applicant and HK$ 18,500 per additional family member. Currently, the value of property owned and inhabited by an applicant is also disregarded.

143. People who have received assistance continuously for 12 months also receive the "annual long-term supplement". This is to pay for the replacement of essential household items. With effect from 1 April 1998, this amount is HK$ 1,605 for a single person; HK$ 3,210 for a family with between two and four members; and HK$ 4,305 for a family with five or more members.

Other special grants under the CSSA Scheme

144. The CSSA includes special grants to cover costs such as rent, school fees and other educational expenses, medically recommended diets, glasses, dentures and burials. These are paid according to need.

Revision of rates under the CSSA Scheme

145. To ensure that the allowances maintain their purchasing power, the standard rates are revised annually to take account of inflation. The level and scope of the special grants are also reviewed periodically to ensure that they keep pace with the actual cost of the items covered and meet the changing needs of recipients.

146. Additionally, we have regularly increased the value of payments in real terms to enable recipients to share in Hong Kong's growing wealth. Over the 20 years between 1978 and 1998, the CSSA rate for single able-bodied adults has increased by about eight times, against a roughly fourfold increase in the rate of inflation. In the financial year 1997-1998, average monthly payments ranged from $3,250 for a single person to $10,740 for a family of four: respectively 32 per cent and 105 per cent of the median wage 3/.

147. More recently, the standard monthly payments to elderly recipients have been increased by between 10 per cent and 20 per cent in real terms with the objective of encouraging them to continue to lead healthy, socially active lives after retirement. With this increase, the average monthly payments will be about $3,670 to a single elderly person and $5,980 for an elderly couple: respectively 36 per cent and 58 per cent of the median wage.

Enhancing public awareness of the availability of CSSA

148. In paragraph 24 of it concluding observations on the previous report, the Committee expressed the concern that:

> "large numbers of individuals and families who are eligible for comprehensive social security assistance (CSSA) do not apply for it, either because they are not aware of CSSA, because they fear the cultural stigma attached to the concept of welfare assistance, or because they are discouraged from applying by certain practices of the authorities which

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3/ This refers to the median wage for all industrial workers.

are not in conformity with Hong Kong law, such as the requirement of children's consent before parents may receive CSSA benefits."

149. The Government does not understand the reference to a requirement for children's consent: there is no such requirement - and there never has been.

150. It is true that there has been a degree of cultural resistance to seeking help from outside the extended family. Cultural attitudes that are deeply entrenched and of long standing cannot easily or quickly be overcome. But the Government has long been aware of the difficulties and has made continuous efforts to publicize the services that are available (including the CSSA Scheme) and to foster acceptance of such assistance as a right rather than a reason for shame.

151. Currently, those efforts entail the involvement of front-line staff, radio announcements and other publicity tools, such as pamphlets and telephone hotline services. They have been on going for several years and are gradually succeeding. A recent survey found that over 75 per cent of elderly persons not in receipt of CSSA benefits knew about the scheme or knew that people in financial difficulty might turn to the Social Welfare Department for assistance. Over 90 per cent of respondents indicated that they would apply for CSSA if they were in difficulties.

Proposal to impose a time limit on entitlement to CSSA for the unemployed

152. Unemployed persons who are experiencing financial hardship may apply for CSSA benefits. Once deemed eligible, there is - at present - no time limit on their entitlement to such benefits as long as they continue to meet the eligibility requirements. We are reviewing this policy with a view to encouraging CSSA recipients who have the potential to find employment to rejoin the workforce.

Simplified application procedures

153. Commentators have said that the application procedures for social welfare benefits - be they under the CSSA or the SSA - are so complex as to deter would-be applicants. It is true that CSSA application procedures include investigation, assessment and authorization. This is necessary to prevent abuse and ensure that public funds are properly spent. But we have not seen evidence to suggest that eligible persons are deterred from applying for CSSA because of these procedures. The survey referred to in paragraph 151 above found that less than one per cent of respondents did not apply for CSSA because they considered the existing application procedures to be too complex. Nevertheless, we will seek ways of simplifying the application procedures to ensure that people who need social support are not deterred from seeking it.

Reimbursement of expenditure on traditional Chinese medicine

154. In paragraph 25 of the concluding observations on the previous report, the Committee expressed concern that CSSA recipients were not granted reimbursement for expenses for traditional medicine, "given the fact that Hong Kong residents frequently use traditional medicine and that Hong Kong courts grant such reimbursements in civil liability actions".

155. Our primary concern is that nobody should be denied the right to health through lack of financial means. That is why all CSSA recipients have - and always have had - access to free medical treatment at public hospitals and clinics. But we are also aware that many Hong Kong people use traditional Chinese medicine either exclusively or (more usually) together with conventional ("Western") medicine. Therefore, the 1996 Review (para. 138 above) took account of expenditure on Chinese medicine 4/ to assess the adequacy of the various standard rates. We also took account of such expenditure when calculating the recent increase in the monthly payments to elderly CSSA recipients.

Social Security Allowance Scheme

156. This scheme includes the Old Age Allowance and the Disability Allowance. It takes the form of a monthly flat-rate allowance to elderly persons aged 65 or above and to persons with a disability. Rates are revised annually to take account of inflation. At the time of writing this report, we were reviewing the scheme to ensure that it continued to meet its objectives.

Old Age Allowance

157. This is payable to elderly persons who have lived in Hong Kong for at least five years and are not recipients of payments under the CSSA Scheme. It is non-means-tested for persons aged 70 and above. Currently, the rate of payment is HK$ 705 a month. A lower allowance of HK$ 625 is payable to persons aged between 65 and 69 who have made a simple declaration that their income and assets do not exceed the prescribed limits 5/. As at 30 June 1998, some 441,000 people were receiving this allowance.

158. The allowance is non-contributory and is funded entirely from the general revenue. It is not granted in recognition of any assessed financial needs and is not intended to meet elderly persons' cost of living in full. Elderly persons in financial hardship and without the means to provide for themselves are eligible for the CSSA Scheme.

Disability allowance

159. This too is non-means-tested. It is payable to persons of all ages who are certified by recognized medical authorities to be suffering from a disability broadly equivalent to 100 per cent loss of earning capacity. They must also have resided in Hong Kong for at least one year. Currently, the rate of payment is HK$ 1,260 a month. A higher rate of HK$ 2,520 is paid to persons needing constant daily attendance and who are not receiving such care in a government or subvented institution. As at 30 June 1998, some 79,000 people were receiving this allowance.

160. Some commentators consider that neither the CSSA Scheme nor the SSA Scheme provide elderly people with an adequate standard of living. A specific criticism

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4/ Based on data in the 1994-1995 Household Expenditure Survey.

5/ The monthly income limit for single persons is $5,910; the asset limit is $169,000. The limits for married couples are $9,740 and $254,000 respectively.

is that the CSSA rate for single persons aged under 60 is just 17 per cent of the median wage. This, they say, is less in real terms than the level of assistance afforded in the 1970s. The Government does not share this view. As explained in paragraph 146 above, the rate for single, able-bodied adults has increased by about eight times over the last 20 years, against a roughly four-fold increase in the rate of inflation. But the monthly payments comprise more than this standard rate: they also include a wide range of special - additional - grants. The average monthly CSSA payment for a single person in 1997-1998 was $3,250 - 32 per cent of the median wage. It is important to note that the objective of the CSSA is to help the financially vulnerable to meet their essential needs. It would not be appropriate, as some have proposed, to link payment levels under the scheme to wages which are determined by market forces.

The Government's general policy on medical care

161. This subject is discussed in paragraphs 413 and 414 below in relation to article 12.

Entitlement to sickness days and sickness allowance

162. Employees are entitled to sickness allowance if they are working for their employers under continuous contract 6/. This entitlement is subject to their having a credit balance of accumulated sickness days. Sickness days are accumulated at the rate of two paid sickness days for each completed month of employment during the first 12 months of employment and four such days for each completed month of service thereafter, subject to a registered maximum of 120 days. To qualify for sickness allowance, any sick leave taken must be for no less than four consecutive days and be certified by a medical practitioner or registered dentist.

163. The daily rate of sickness allowance for any employee is equal to four fifths of the employee's normal wages. Employers must pay the sickness allowance on the normal pay day. Failure to do so carries a maximum fine of HK$ 50,000. In 1996, one employer was convicted of the offence and fined HK$ 1,000. There were no prosecutions against employers in respect of this offence in 1997 or in the first six months of 1998. In 1997, the Labour Department handled a total of 397 claims for sickness allowance and settled 71.5 per cent of the claims through conciliation. In the first half of 1998, it handled 277 claims, settling 63.5 per cent of them. Unsettled claims were referred to the Labour Tribunal or the Minor Employment Claims Adjudication Board.

164. Employers may not terminate employees' contracts of employment when they are on paid sick leave, except in cases of summary dismissal due to serious misconduct. Employers who contravene this provision shall be guilty of an offence and liable upon conviction to a fine of HK$ 100,000. Additionally, they will have to pay the affected employees the amounts specified under the Ordinance. And the employees may claim remedies for unreasonable and unlawful dismissal. If the employers fail to show valid reasons for dismissal (such reasons being prescribed in the Ordinance), the Labour Tribunal may order reinstatement or re-engagement, subject to the mutual consent of both parties,

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6/ Employment Ordinance, section 33.

or award terminal payments against the employers. Where no order for reinstatement or re-engagement is made - and irrespective of whether there is an award of terminal payments - the Labour Tribunal may, in appropriate cases, award the employee compensation not exceeding HK$ 150,000.

Entitlement to long service payment

165. Persons who have been employed under continuous contract for at least five years are entitled to long service payment when they are:

(a) Dismissed other than by reason of serious misconduct or redundancy; or

(b) Aged 65 or above and resign; or

(c) Certified by a registered medical practitioner as permanently unfit for their present jobs and they resign on that ground 7/.

Long service payment is also payable to the beneficiaries of persons who, having been employed under continuous contract for five years or more, die in service 8/.

166. Monthly-paid employees receive an amount equivalent to two thirds of one month's pay (capped at two thirds of HK$ 22,500) for every year of service. Those paid daily rates or on a piece-work basis receive the equivalent of 18 days' wages (again capped at two thirds of HK$ 22,500) for every year of service. Incomplete years of service are calculated pro rata.

167. The amount of the long service payment also depends on statutory limits 9/ on the number of years to be regarded as reckonable service. At present, the cap for manual workers is 31 years plus 50 per cent of any period of service exceeding 31 years. That is also the "cap" for non-manual workers whose average monthly wages did not exceed HK$ 15,000 for the 12 months preceding 8 June 1990. The ceiling for reckonable years of service is progressively being raised. By October 2004, all years of service will be fully "reckonable". The service of non-manual employees whose average monthly wages exceeded HK$ 15,000 for the 12 months preceding 8 June 1990 can be reckoned up to 1980 for the purpose of calculating long service payment. At present, the maximum amount so payable is HK$270,000. This will progressively increase, reaching HK$ 390,000 by October 2003.

Protection of wage payments

168. Employees must be paid not later than seven days after the end of the wage period or the date of termination, as the case may be 10/. Employers who wilfully and without reasonable excuse fail to pay their employees within this

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7/ Employment Ordinance, section 31R.

8/ Employment Ordinance, section 31RA.

9/ Employment Ordinance, section 31V and Seventh Schedule.

10/ Employment Ordinance, sections 23 and 25.

period shall be guilty of an offence and liable upon conviction to a fine of HK$ 200,000 and imprisonment for one year.

169. In June 1997, the Employment Ordinance was amended to require employers to pay interest on overdue wages. If wages remain unpaid one month after they are due, employees may terminate their contracts of employment without notice or payment in lieu of notice. The employers shall be deemed to have agreed to pay to the employee statutory termination payments.

The ILCs

170. Information on maternity benefits was provided in the article 22 report 11/ on the ILO Maternity Protection Convention (No.3) for the period 1 July 1992 to 31 December 1996.

171. Information on the compensation schemes for employees injured at work or suffering from occupational diseases was provided in the following reports on the ILCs:

(a) Article 22 report on Workmen's Compensation (Agriculture) Convention (No. 12) for the period 1 July 1989 to 30 June 1993;

(b) Article 22 report on Workmen's Compensation (Accidents) Convention (No. 17) for the period 1 July 1989 to 30 June 1993; and

(c) Article 22 report on Workmen's Compensation (Occupational Diseases) Convention (Revised) (No. 42) for the period 1 July 1989 to 30 June 1993.

Employees' compensation

172. The Employees Compensation Ordinance (Chapter 282) prescribes the rights and obligations of employers and employees in respect of injuries or death caused by accidents arising out of and in the course of employment, or by specified occupational diseases. These are set out in annex 16.

Employees Compensation Assistance Fund

173. This is a central fund established under the Employees Compensation Assistance Ordinance (Chapter 365). It provides a safety net for injured employees - or dependants of deceased employees - whose employers default on compensation payments. The fund is financed by a levy imposed on all employees' compensation insurance policies that employers are required to take out under section 40 of the Employees' Compensation Ordinance.

Compensation for pneumoconiosis

174. The Pneumoconiosis (Compensation) Ordinance (Chapter 360) provides that persons suffering from pneumoconiosis shall receive compensation for incapacity in the form of monthly payments until they die. Their families may claim a lump sum in compensation if they die of the disease. The detailed compensation provisions are set out in annex 17.

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11/ See footnote 9/.

175. Persons receiving compensation under the Ordinance may receive further medical examination every two years. If they are found to have suffered additional incapacity, their monthly compensation for incapacity - see annex 17, paragraph (a) - is adjusted accordingly.

The Occupational Deafness Compensation Scheme

176. This was established under the Occupational Deafness (Compensation) Ordinance (Chapter 469) to compensate employees suffering from noise-induced deafness by reason of their employment. The scheme is financed by a levy on employees' compensation insurance premiums. It is administered by the Occupational Deafness Compensation Board.

177. Employees can apply for compensation if they have been employed for 10 years in Hong Kong in any of 25 occupations defined as "noisy" in schedule 3 of the Ordinance. The prescribed period is five years for persons who have worked in any of the four occupations defined as particularly noisy. A further condition for eligibility is a hearing loss of at least 40 decibels in each ear. Compensation is in the form of lump sum payments. The amount of compensation varies with claimants' age at the time of application, their monthly earnings (to a maximum of HK$ 15,000), and the degree of permanent incapacity (measured from 1 to 60 per cent). The amounts are calculated as follows:

| Age group | Amount of compensation |
|---|---|
| Under 40 | 96 x monthly earnings x percentage of permanent incapacity |
| 40 - 55 | 72 x monthly earnings x percentage of permanent incapacity |
| 56 or above | 48 x monthly earnings x percentage of permanent incapacity |

Retirement benefits

178. In paragraph 23 of its concluding observations on the previous report, the Committee expressed its deep concern that there was no comprehensive mandatory old-age social security scheme in Hong Kong and that approximately 60 per cent of the population was not protected by any public or private pension plan. The Government has long shared these concerns and has devoted considerable resources to determining how best to address them.

179. Formerly, retirement schemes in Hong Kong were operated on an entirely voluntary basis. The Occupational Retirement Schemes Ordinance (ORSO" (Chapter 426) of 1993 was enacted to ensure proper management and funding of those schemes and to provide greater certainty that retirement scheme benefits promised to employees would be paid when they fell due.

180. The ORSO provides that all voluntary schemes operating in or from Hong Kong must be registered unless they are exempted 12/. As at 30 June 1998, there were 16,933 registered schemes covering 885,395 employees. Some 1,970 schemes were exempted from registration.

181. The assets of registered schemes must be kept separate and distinct from the assets of employers or the scheme administrators. Each such scheme must have at least one independent trustee who must not be the employer, his employee or his associate. Funds from such schemes may not be lent to the employer or his associate. Nor may they be used for any excessive investment in the business undertaking of the employer 13/. Other requirements include independent audit, actuarial reviews (for defined benefit schemes 14/); the annual submission of audited financial statements to the Registrar of Occupational Retirement Schemes; and disclosure to its scheme members of information regarding the operation of the scheme.

182. The established voluntary schemes cover about 890,000 people: less than one third of the 3.3 million members of the workforce. Civil servants and most teachers - accounting for (approximately) an additional 5.5 per cent of the workforce - are covered by statutory pension schemes. The need for a formal retirement protection system to protect the workforce as a whole is beyond dispute. But the form of such protection has been the subject of protracted debate.

Retirement protection

183. During the 1970s and 1980s, there were regular calls for the introduction of a central provident fund (CPF), probably because such a system was operating elsewhere in the region. But this approach - which entailed a centralized fund management system - was never considered appropriate for Hong Kong because management would inevitably follow conservative investment policies that would not generate sufficient earnings to provide adequate benefits on retirement. Another consideration was that identified in the 1994 report of the International Bank for Reconstruction and Development (IBRD: the World Bank) 15/:

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12/ Offshore schemes registered with or approved by a recognized overseas regulatory authority may be exempted. So too are many schemes in which not more than 10 per cent of the members or 50 members (whichever is the less) are holders of Hong Kong permanent identity cards.

13/ Investment in this regard is limited to a maximum of 10 per cent of the assets of a registered scheme.

14/ "Defined benefit" means that the benefits of a retirement scheme of this kind are determined by a formula that takes account of its members' years of service and final salary.

15/ Averting Old Age Crisis: Policies to Protect the Old and Promote Growth, Oxford University Press, New York, 1994.

> "publicly managed funded plans (provident funds) ... are, essentially, a hidden tax on labor... By giving governments control over a major share of the financial assets in a country, they deprive the private sector of access to these funds and thereby inhibit growth."

First consideration of a decentralized, mandatory retirement protection system

184. In October 1992, the Government issued a consultation document seeking views on a mandatory, contributory, retirement protection scheme. This was known as the "Community-wide Retirement System". Had this been adopted, employers and employees would have contributed equal amounts on a mandatory basis to one of a wide choice of competing private sector funds. The level of contribution was set at a rate which was considered to be affordable yet able to produce a level of retirement benefits equal to 40 per cent of the average career earnings in real terms of the majority of the workforce. Employees could then look forward to a reasonable "nest egg" for their retirement without significantly reducing their take-home pay during their working lives.

185. There was concern that this approach would leave many in the workforce with inadequate benefits. For example, those who were nearing retirement would obtain little in the way of retirement protection, while those who had already retired would receive nothing at all. Persons who were unable to maintain regular employment, and thus contributions, would at best receive reduced benefits on reaching retirement age. There was also concern about the lack of any protection for the contributions.

186. The Government's view was broadly in line with that in the World Bank study cited above. That is, a fully funded, privately managed mandatory scheme should boost capital accumulation and financial market development, so inducing economic growth. But it was also alert to the Bank's caveat that, while privately managed savings accounts were beneficial for capital market development, had the least distortionary effect on labour markets and were relatively immune to political manipulation, they did not

> "address the problems of ... poverty among those with low lifetime incomes whose earning capability is further diminished by old age. Nor do they insure against the risks of low investment returns (because of poor individual choice or economy-wide recession) or high longevity."

187. Thus, the Government was aware that such a scheme would be insufficient on its own. As the World Bank report argued, a truly sound system of post-retirement security needed to stand on three "pillars" not just one. Like the Bank, the Government considered that the mandatory, privately managed, model offered the best long-term advantages. But there was also a need for two other "pillars", namely

(a) A tax-funded safety net with the limited objective of alleviating old age poverty and insuring against such risks as low investment returns, recession, inflation or private market failures. In Hong Kong, that need was (and is) met by the CSSA and the Old Age Allowance; and

(b) Voluntary occupational or personal saving plans for people who wanted more income and insurance in their old age.

Old Age Pension Scheme

188. In July 1994, mindful of the views expressed on the earlier proposal, the Government issued a public consultation document on a proposal for an old age pension scheme. This would have provided a flat rate pension financed through mandatory contributions from employers and employees - at a rate based on assessable income - and a one-off contribution from the Government. As proposed, the scheme would have produced a guaranteed basic amount for all eligible residents aged 60 or above, including those who had already retired. More than 6,000 written submissions were received. But there was no consensus in support of the proposal. In the absence of unequivocal support, the Government did not consider that it had a mandate to proceed.

189. In consulting the public on this model, the Government was not unaware of the pitfalls discussed in the World Bank study:

(a) Where "pay-as-you-go" systems are the dominant form of old age security, there is a disincentive to personal saving as there is an increased expectation of - and reliance on - the State pension;

(b) The costs of such systems make it difficult for Governments to finance important public goods: a "growth inhibiting consequence"; and

(c) "Ultimately, the costs ... have become too large to bear in many countries. When the public pillar fails to deliver on its promises, old people who depend on it exclusively have nowhere else to turn. Thus a dominant public pillar in a single pillar system increases the risks for the old."

Thus, even had this scheme received a public mandate, it would not, on its own, have provided adequate post-retirement protection.

Second consideration of a mandatory, decentralized, retirement protection system

190. Submissions on the Old Age Pension Scheme had indicated support for a mandatory, contributory decentralized, retirement protection system. Discussion with a wide variety of community organizations confirmed that support. Accordingly, in July 1995, the Government enacted the Mandatory Provident Fund Scheme Ordinance (Chapter 485).

191. The Ordinance provides the framework for a privately managed retirement protection system. In early-1998 - after consultation with representatives of employees, employers, professional organizations, the retirement schemes industry and the legislature - the Ordinance was amended and subsidiary legislation necessary for its effective implementation was enacted.

192. As the name of the Ordinance indicates, the system is mandatory. Employers and, with the exception in (b) below, employees are required to contribute to private trust schemes. These are managed by approved trustees who meet stringent criteria relating to capital adequacy, financial soundness and qualifications. Upon retirement, scheme members will receive benefits commensurate with the contributions made during their working lives and the investment returns arising from them. Members of certain existing ORSO schemes are not required to join a mandatory provident fund (MPF) scheme.

193. The main features of the MPF are:

(a) Both employers and employees are required to contribute at the rate of 5 per cent of the employees' monthly cash income;

(b) Employees earning less than $4,000 a month are not required to contribute, though they may choose to do so if they wish. Whether they do so or not, their employers must make the 5 per cent contribution on their behalf. The maximum mandatory payment is 5 per cent of a cash income of $20,000 a month. Contributions are voluntary in respect of any portion of income exceeding that amount;

(c) Contributions and accrued benefits will be fully vested in the scheme members. With the agreement of the approved trustee, employers may offset any long service or severance payments made to their employees against the portion of accrued benefits attributable to contributions made by the employers;

(d) Employees will be able to transfer their accrued benefits between schemes when changing employment (that is, the benefits will be fully "portable");

(e) Accrued benefits will be preserved until scheme members attain retirement age - defined as 65 years of age - except under certain circumstances 16/; and

(f) Measures will be adopted to ensure the security of scheme assets. And a compensation fund will be established to compensate scheme members who suffer losses caused by misfeasance or illegal conduct by approved trustees and/or other service providers.

194. At the time of drafting this report, an MPF Schemes Authority had been established to ensure the prudential regulation and supervision of approved trustees and the smooth operation of the MPF system. Both the Authority and the companies operating the retirement schemes were expediting the necessary preparatory work. This included the design and development of computer systems and the conduct of publicity and public education campaigns. The goal was to bring the MPF system into operation as soon as practicable.

195. Commentators have said that the MPF is unsatisfactory in that it makes no provision for homemakers, the unemployed or for people at or past retirement age. And, they say, it makes inadequate provision for people who - at the inception of the scheme - are within a few years of retirement.

196. The Government does not accept this assessment for the reasons adduced in paragraphs 192 and 193 above. With the establishment of the MPF, the World Bank's three "pillars" for soundly based post-retirement protection are now in place in Hong Kong. None stands alone. Each complements the other.

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16/ Section 15 of the Mandatory Providence Fund Schemes Ordinance prescribes circumstances where accrued benefits may be paid before the attainment of the normal retirement age. Examples include the death of a member, a member having permanently ceased employment or self-employment and having attained the age of 60, a member's permanent departure from Hong Kong or being totally incapacitated.

## Article 10
## Protection of the family

197. At the constitutional level, article 37 of the Basic Law provides that the freedom of marriage of Hong Kong residents and their right to raise a family freely shall be protected by law 1/. Article 19 of the BOR gives domestic effect to the provisions of article 23 of the Covenant.

### The family

198. As explained in paragraph 84 of the previous report, the 1991 white paper, "Social welfare into the 1990s and beyond", recognizes that

> "the family unit is a vital component of society. It provides an intimate environment in which physical care, mutual support and emotional security are normally available to foster the development of children into healthy and responsible members of society. The family is a source of support and strength in the care of the infirm and the elderly, the disabled and delinquents for whom family involvement generally contributes to a more successful rehabilitation."

The emphasis is on the functions of the family and its effect on the individuals within the unit, rather than the forms in which they exist.

### Definition of "family"

199. The Government maintains the definition in paragraph 85 of the previous report. That is: a "family" is a group of people of at least two generations related by blood and by marriage who may be living together as one household or separately, but keeping their kinship intact. It remains the case that, in Hong Kong, the most common family structures are the unextended nuclear family and the vertically extended nuclear family. As previously explained, the unextended nuclear family household is one which comprises a "family nucleus" 2/ without other related persons. A vertically extended nuclear family comprises a family nucleus with one or more related persons not of the same generation.

#### Unextended nuclear family households

200. In the past two decades, the number of unextended nuclear families has increased. According to the 1996 Hong Kong Population By-Census, 63.6 per cent of domestic households were unextended nuclear family households comprising an average of 3.5 persons. In 1991, the corresponding figures were 61.6 per cent and 3.6. In 1986, the corresponding figures were 59.2 per cent and 3.8. And in 1981, they were 54.4 per cent and 4.1. The gradual erosion continues of the family ties, mutual care and support that people once expected and received from their extended families. And parents on low incomes increasingly need help from

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1/ Article 41 of the Basic Law provides that non-residents Ashall, in accordance with law, enjoy the rights and freedoms of the residents@.

2/ A "family nucleus" is a married couple without children, a married couple with one or more children who have never married, or one parent with one or more children who have never married.

the community to free themselves for full-time employment. In the two years since the Committee examined the previous report, demand has continued unabated for family support, child care services, social security benefits and housing assistance.

Single parent families and split families

201. The 1996 Population By-Census recorded a total of 42,309 single parents of whom 30,402 (71.9 per cent) were single mothers and 11,907 (28.1 per cent) single fathers. The corresponding figures for 1986 and 1991 were:

| Year | Single mothers | Single fathers | Total |
|---|---|---|---|
| 1986 | 24,149 (65.9%) | 12,504 (34.1%) | 36,653 (100%) |
| 1991 | 23,059 (66.8%) | 11,479 (33.2%) | 34,538 (100%) |

202. Most single parents were aged 30 to 49 and were living with one or two children. About 66.3 per cent of single parents were in paid employment. Others were either homemakers, retired, or unemployed. In the absence of support from spouses, single parents often need financial and housing assistance, child care services, home help services, counselling services, temporary shelter and emotional support.

203. Thus, the number of such families continues to increase. And the plight of those on low incomes remains of concern. The main concern remains the rapid increase in the divorce rate. This, in turn, arises largely from changing social values and the changing role of women in terms of their social-economic status in the community. In 1997, there were 14,482 divorce petitions; in 1987 there were 5,747.

204. The heads of single-parent families are usually parents who - being either divorced or separated - are living with children aged under 18. Their children have priority access to government and aided child care facilities. The parents have access to other forms of public assistance such as housing and financial support. Single parents who have recently separated or divorced - and who cannot continue to live in the matrimonial home - may be eligible for compassionate rehousing. Wives caught in these circumstances also have access to temporary places of asylum. As at 30 June 1998, the Government's Social Welfare Department was providing casework services to 416 split families and some 747 children separated from mothers who did not have the right of abode in Hong Kong.

New arrivals from the mainland

205. In paragraphs 89 to 98 of the previous report, we explained that mainland China was Hong Kong's principal source of immigrants, over 90 per cent of whom came for family reunion. Entry was subject to a daily quota of 150, designed to ensure a rate of settlement that our resources could reasonably absorb. But the extent of demand was such that not all members of a family could obtain the necessary exit permits at the same time from the mainland authorities. This had led to the problem of "split-families" which was mainly due to Hong Kong men marrying mainland women who were, of course, subject to the quota system. The birth of children increased the numbers waiting in the "queue".

206. To expedite entry for family reunion, a sub-quota of 48 places has been reserved (under the overall daily quota of 150) to enable mainland mothers to

take with them a child aged under 14 when they enter Hong Kong for settlement. Nevertheless, some families continue to arrange for their children to enter Hong Kong illegally. When discovered, they are removed to the mainland, a practice that - as previously reported - some commentators consider to be inhumane. But removal remains necessary both in justice to those waiting their turn in the queue and to preserve an orderly and manageable rate of entry.

207. This issue is also discussed in paragraphs 230 to 241 of ICCPR1 in relation to article 12 of that Covenant and in paragraphs 417 to 425 in relation to article 23. Paragraphs 209 to 219 below cover essentially the same ground but are included here for convenient reference and because they are relevant to rights conferred under the ICESCR.

208. In paragraphs 95 and 96 of the previous report, we explained the measures devised to anticipate and contain the additional demand engendered by article 24(3) of the Basic Law 3/. That provision accorded right of abode in the HKSAR to children of Chinese nationality born outside Hong Kong who - at the time of their birth - had at least one parent who was a Hong Kong permanent resident of Chinese nationality. As at 1 July 1997, an estimated 66,000 mainland residents aged 20 or below qualified for the right of abode under the provision. To expedite their entry, the sub-quota for them was increased from 45 to 60 a day from January 1998. Between 1 July 1997 and 30 June 1998, about 25,000 such persons entered Hong Kong for settlement.

209. Since the previous report - and as a result of the increased rate of migration - there has been a substantial increase in the number of new residents. Between 1 July 1995 (when the daily quota was increased) and 30 June 1998, some 159,500 people from the mainland have settled in Hong Kong. Many (some 20 per cent) cannot speak either Cantonese or English and so have difficulty in communicating with their neighbours, co-workers and schoolmates. The children have been educated in a different pedagogic tradition and are unfamiliar with the Hong Kong curricula. Adults often find that their qualifications are not recognized in Hong Kong. Together, these things can result in disorientation, "culture shock" and other difficulties such as finding work or school places, particularly on first arrival.

210. Other difficulties arise from family circumstances. The (Hong Kong based) husbands are often less well off than their mainland based families had expected. Their living conditions may have been adequate when they were single but, often, are less than adequate for families with children. These difficulties, compounded by those described above, have in some cases led to family breakdown, domestic violence and spouse/child abuse.

211. In paragraph 14(d) of its concluding observations on the previous report, the Committee expressed the concern that the number of split families "continued to grow at an alarming rate". In paragraph 26, it reiterated this concern, expressing the view that the Gov nment had an obligation to ensure that the criteria applied in deciding on those eligible for legal migration into Hong

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3/ Article 24(3) of the Basic Law is reflected in Schedule 1 of the Immigration Ordinance, which provides that a person is a permanent resident if he/she is of Chinese nationality and born outside Hong Kong to a parent who is a permanent resident and who had the right of abode in Hong Kong at the time of the birth of the person.

Kong were consistent with the provisions of the Covenant. Local commentators have echoed those concerns. In paragraph 34, the Committee urged the Government to "take every possible measure to develop a fair and open one-way permit approval mechanism in order to facilitate rapid family reunification."

212. The Government and NGOs are acutely aware of these matters and, together, have taken active steps to address them. New arrivals have access to the full range of welfare services, including counselling, day and residential child care services, financial assistance, and housing assistance where compassionate grounds apply. And, as explained in paragraph 97 of the previous report, the Government subvents the Hong Kong Branch of the International Social Service (ISS), to provide post-migration services such as information and enquiry services; orientation sessions; short-term counselling and referral services. The ISS subvention is a long-standing arrangement (it began in 1972). But since 1996, following the decision to increase the rate of immigration, the Government has provided it with additional resources to strengthen its post-migration services.

213. The increase in the migration quota has posed special challenges in all those areas and both NGOs and the Government have seen the need for a co-ordination mechanism to ensure that the various programmes for new arrivals are coherently focused. To that end, in December 1995, the Government established the Coordinating Committee on New Arrival Services to monitor and assess the services for new arrivals from the mainland. It is chaired by the Director of Home Affairs and is comprised of representatives of relevant government departments and the Hong Kong Council of Social Services. They meet regularly to identify and examine the problems encountered by new arrivals 4/ and recommend measures for both the Government and NGOs to pursue. At the local level, the Committee's work is complemented by District Coordinating Committees on New Arrival Services in each of the 18 districts.

214. In January 1998, the Committee was further strengthened by the establishment of the Steering Committee on New Arrival Services. This is a higher-level body chaired by the Secretary for Home Affairs. It oversees the work of the Coordinating Committee and determines strategy for the provision of services.

215. Welfare planning naturally takes account of the anticipated numbers of new arrivals from the mainland. But social provision also comprises non-welfare services such as education and employment. To assist new arrivals in these areas, the Government has:

(a) Education: established a Central Placement Unit in the Education Department to oversee the provision of school places. Other initiatives in this area are discussed in paragraphs 564 to 566 in relation to article 13;

(b) Employment: established an Employment and Guidance Centre for New Arrivals in the Labour Department to help new arrivals find employment. New arrivals also have access to the retraining courses offered by the Employees'

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4/ The Home Affairs Department conducts regular surveys to help the Coordinating Committee identify and examine the problems encountered by the new arrivals. The Department also obtains direct information from new arrivals themselves.

Retraining Board, which is explained in paragraph 58 above in relation to article 6; and

(c) General: published a "Service handbook for new arrivals" to provide general information on life in Hong Kong and details of services available to new arrivals. The handbook is distributed free of charge to new arrivals upon their arrival in Hong Kong and is readily available at government outlets.

Action has also been taken in relation to the housing needs of new arrivals. That is discussed in paragraphs 381 to 382 below in relation to article 11.

Certificate of Entitlement (C of E) Scheme

216. As explained in paragraph 95 of the previous report, the legal definition of "permanent residents" then in force differed from that in the Basic Law. According to article 24(3) of the Basic Law, persons of Chinese nationality born outside Hong Kong to Chinese citizens 5/ born in Hong Kong or who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the HKSAR are permanent residents and are entitled to the right of abode in the HKSAR.

217. Before 1 July 1997, persons covered by article 24(3) of the Basic Law were not entitled to the right of abode in Hong Kong. The Basic Law is silent on the procedures by which persons may establish their entitlement to the right of abode in the HKSAR. The Immigration (Amendment) (No.3) Ordinance ("the No. 3 Ordinance") was enacted on 10 July 1997, with effect from 1 July 1997, to provide such procedures. This Ordinance, which introduced the C of E Scheme, provides that a person's status as a permanent resident of the HKSAR under article 24(3) of the Basic Law can only be established by his/her holding, amongst other things, a valid travel document with a valid C of E affixed to it. In this connection, persons who were born in mainland China to Hong Kong residents and claim that they have the right of abode in the HKSAR have to apply for a valid travel document and C of E before being admitted to Hong Kong. This arrangement ensures that those who claim that they have the right of abode in the HKSAR under article 24(3) of the Basic Law have that claim verified before entering the HKSAR. As at 30 June 1998, the scheme had ensured the speedy and orderly admission of about 25,000 eligible children.

218. Some commentators are of the view that the C of E Scheme exacerbates the problem of split families and infringes the rights of children and families, in relation to both article 10 of the Covenant and to the Convention on the Rights of the Child. The Government does not accept that view. The provisions of the Ordinance do not require family members to live apart from one another. If families do live apart it is because they have chosen to do so and not because of the Ordinance. Hong Kong permanent residents have the right to leave Hong Kong and to join their families in mainland China.

219. The scheme has been challenged in the courts. So, too, have other provisions introduced into the Immigration Ordinance (in July 1997) in order to give effect to article 24(3) of the Basic Law. Those challenges are discussed in

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5/ In this context, "Chinese citizens" means all Hong Kong residents who are of Chinese descent and born in Chinese territory, including Hong Kong.

detail in paragraphs 234 to 240 of ICCPR1 in relation to article 12 of that Covenant (reproduced in annex 18 for convenient reference).

Mainland children adopted by Hong Kong residents

220. In March 1998, three Hong Kong parents sought judicial review against orders for the removal of mainland children whom they had adopted and who had entered/remained in Hong Kong illegally.

221. Paragraph 1(2)(c) of Schedule 1 to the Immigration Ordinance provides that a child adopted in Hong Kong under an order of the court is to be treated as the child of the adoptive parents. But that does not confer right of abode under article 24(3) of the Basic Law (see para. 216 above) if the child is born outside Hong Kong to parents who are not permanent residents. A child born outside Hong Kong to parents who are not permanent residents - and who is subsequently adopted by parents who are - is treated in the same way as a child born to parents who do not have right of abode at the date of birth of the child and who subsequently acquire that status.

222. As at the time of drafting this report, the case has yet to be heard.

Welfare services to families

223. As explained in paragraph 101 of the previous report, the Government provides welfare services to help prevent family breakdown and to assist families in trouble. The form of such provision is as described in the previous report 6/. But the Committee may wish to note that the number of family life education workers has increased from 71 in 1994-1995 to 79 in 1997-1998. In September 1997, we added a new Part II (a) (sections 11A to F) to the Child Care Centre Ordinance (Chapter 243). The aim was to facilitate the formation of "mutual help child care groups" 7/ by exempting them from the normal registration procedures for child care centres. The "parent organizations" 8/ must, of course, satisfy the Director of Social Welfare that the premises to be used for such centres are fit for that purpose and comply with all the requirements relating to structural, fire and other safety concerns.

224. The various support services described in paragraph 101(b) of the previous report have continued to expand:

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6/ That is: family life education; family activity and resource centres (initial points of contact for social members and families in difficulty); a family care demonstration and resources centres (to teach home management, and parenting skills, and communication skills); and parent resource centres to assist parents with disabled children.

7/ "Mutual help child care group" means a group established by a bona fide non-profit-making organization and operating on a non-profit-making basis for the purpose of providing occasional care and supervision of the children of members of the group.

8/ "Parent organization" means, in relation to a mutual help child care group, the bona fide non-profit-making organization by which the mutual help child care group was established.

| | Provision in 1994-1995 | Provision in 1997-1998 |
|---|---|---|
| Government and aided day nurseries | 23,768 places | 25,941 places |
| Aided day crèches | 1,440 places | 1,479 places |
| Occasional child care units (three places per unit) | 135 units (405 places) | 230 units (690 places) |
| Home help teams | 100 teams | 126 teams |
| Family aide workers | 23 workers | 52 workers |

An additional 1,882 aided day nursery and 142 aided day crèche places, six occasional child care units and 23 home help teams will be provided in 1998-1999.

225. The Government provides financial assistance to parents who cannot pay the fees charged by the day nurseries and crèches. As at 30 June 1998, some 19,000 children were receiving such assistance.

226. As explained in paragraph 101(c) of the previous report, there are several services to help families with serious difficulties. Again, these are as previously described (family casework, clinical psychology, social work in schools, and the medical social service). Temporary residential care (which includes such things as foster care, small group homes, residential nurseries and crèches, and residential homes) remains available to children who are unable to live with their parents. Overall demand has continued to increase and these services expanded from 3,260 places in 1994-1995 to 3,309 in 1997-1998. Details are as follows:

| | Provision in 1994-1995 | Provision in 1997-1998 |
|---|---|---|
| Family caseworkers | 491 | 706 |
| Clinical psychologists | 32 | 59 |
| School social workers | 227 | 286 |
| Medical social workers | 318 | 372 |
| Foster care places | 560 | 600 |
| Small group homes | 86 | 113 |

227. Utilization is closely monitored to assess ongoing demand and to assist forward planning. Current data indicate that the existing level of provision is adequate.

228. The Government remains of the view that the natural family setting provided by foster care and small group homes offers the best form of care for children separated from their parents. To meet increasing demand and to improve service quality, we will provide 26 additional family caseworkers in 1998-1999. We will also provide eight additional clinical psychologists.

After-school care

229. In paragraph 102 of the previous report, we explained that the After-school Care Programme (ASCP) provided child care and other support for children aged between six and 12 whose families could not adequately supervise them outside school hours 9/. As at 31 March 1998, about 126 such programmes were looking after over 5,700 primary students (the Committee will recall that, in December 1994, the corresponding numbers were 118 and 4,600 respectively).

230. As explained in paragraph 103 of the previous report, the ASCPs are provided by NGOs on a non-profit making basis. But, they are self-financing and must therefore charge fees. Fees continue to vary according to the actual running costs of the individual centres (which depend on size and location). Rent and rate support from the Government continues, helping to minimize costs and hence fees. As at 31 March 1998, fees averaged about $1,100 a month.

Domestic violence

Protection under the Domestic Violence Ordinance (Chapter 189)

231. Domestic violence - of which spouse battering 10/ remains the most common form - continues to be a cause of concern. The Government's strategy is to:

(a) Prevent the occurrence of such violence, through family life education and publicity;

(b) Arrest offenders and subject them to the criminal justice system; and

(c) Assist the victims through counselling.

232. The Domestic Violence Ordinance, enacted in 1986, provides protection to victims of domestic violence. Persons who have been molested by their spouses or parents may apply to the District Court 11/ for an injunction to:

(a) Restrain the other party from molesting the applicant;

(b) Restrain the other party from molesting any child living with the applicant;

(c) Exclude the other party from the matrimonial home; or

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9/ As previously explained, parents in financial difficulties and eligible for the CSSA Scheme may apply for full financial assistance for their children to join the ASCP. Others who are in need but not eligible for CSSA may obtain help from charitable trust funds administered by the Government.

10/ That is the use of force by a person to cause bodily or psychological injury to his/her spouse.

11/ Section 3 of the Ordinance.

(d) Require the other party to permit the applicant to enter and remain in the matrimonial home.

Section 5 of the Ordinance provides that a police officer may arrest without warrant any person whom he reasonably suspects of being in breach of the injunction.

Other legal protections

233. Wounding, inflicting grievous bodily harm, or making an assault occasioning actual bodily harm are crimes under the Offences Against the Person Ordinance (Chapter 212). Additionally, the Crimes Ordinance (Chapter 200) contains provisions that protect children from sexual abuse.

Care for the victims of domestic violence

234. The police work closely with social workers and clinical psychologists to provide post-traumatic care and counselling to the victims of violence. A child's first account of alleged abuse is video-taped by an officer specially trained for that purpose. To minimize the trauma of child victims called on to give evidence in court, video-taped testimony may be produced in evidence and child witnesses may testify or be cross-examined by live television link. Police officers attend ongoing training programmes to keep them abreast of new procedures and developments and to make them more sensitive in handling cases of domestic violence.

Cases where the victim was the assailant's spouse or cohabitant: statistics

235. Cases recorded in the past three years were as follows:

| | 1995 | | 1996 | | 1997 | |
|---|---|---|---|---|---|---|
| Type of offence | Male victim | Female victim | Male victim | Female victim | Male victim | Female victim |
| Murder | 1 | 5 | 3 | 6 | 3 | 8 |
| Wounding | 16 | 38 | 17 | 30 | 19 | 44 |
| Serious assault | 32 | 231 | 36 | 206 | 35 | 215 |
| Rape | 0 | 1 | 0 | 0 | 0 | 1 |
| Indecent assault | 0 | 1 | 0 | 1 | 0 | 1 |
| Unlawful sexual intercourse | 0 | 5 | 0 | 7 | 0 | 1 |

Services for victims of domestic violence

236. The services provided by NGOs and by the Social Welfare Department are described in annex 19.

237. In paragraph 110 of the previous report, we explained that a Working Group on Battered Spouses, comprising members from concerned government departments and NGOs, had been established to improve coordination amongst professionals dealing with the problem. Since then, the Working Group has developed "Multi-disciplinary guidelines on the handling of battered spouses" and has initiated

measures 12/ to educate the public on the destructive forces of family violence. Through these initiatives, it also seeks to encourage families at risk to seek early professional advice. In April 1997, in response to a proposal by the Working Group, the Government established a central information system to collect data on cases of spouse battering handled by NGOs, government departments and the Hospital Authority. These efforts will continue.

Establishing a family: marriage

238. In paragraph 112 of the previous report, we explained that the right of men and women voluntarily to enter into monogamous marriage with their full and free consent was guaranteed under the Marriage Ordinance. This topic is discussed in paragraphs 405 to 416 of ICCPR1 in respect of article 23 of that Covenant.

Maternity protection

239. In paragraph 113 of the previous report, we explained that the Employment Ordinance entitled female employees to maternity leave subject to certain conditions. At that time, those who had worked continuously for the same employers for at least 26 weeks were entitled to maternity leave. But they were only entitled to leave pay if their contracts so provided. Those who had worked continuously for the same employers for at least 40 weeks before the commencement of maternity leave - and had no more than two surviving children - were entitled to leave pay of at least four fifths of their normal wage. Maternity leave normally began four weeks before the expected date of confinement and ended six weeks after the actual date of confinement. Employees could give notice that they intended to take maternity leave at any time after their pregnancies were certified. Those who had worked for their employers for at least 12 weeks before tendering such notice were protected from termination of employment during the period between the date on which they gave such notice and the date on which they were due to return to work. These provisions were substantially amended in June 1997.

Employment (Amendment) Ordinance (June 1997)

240. This amended the provisions relating to eligibility for maternity leave, flexibility in taking such leave, eligibility for maternity leave pay, employment protection for pregnant employees, and assignment of heavy, hazardous or harmful work. Specifically:

(a) Eligibility for maternity leave: the 26-week qualifying service period was abolished. Now, women employed under continuous contract immediately before the commencement of their maternity leave are entitled to maternity leave;

(b) Flexibility: with their employers' consent, pregnant employees may now commence maternity leave two to four weeks before the expected date of confinement. The 10 weeks' leave period is then counted from the agreed commencement date. If confinement occurs later than the expected date of confinement, they enjoy a further period equal to the number of days from the day after the expected date of confinement to the actual date of confinement.

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12/ A poster campaign and public announcements on radio and television.

They may enjoy a further period of up to four weeks on the grounds of illness or disability due to pregnancy or confinement;

(c) Eligibility: the former condition that pregnant employees should not have more than two surviving children was repealed;

(d) Termination of employment: the 12-week qualifying period (see para. 239 above) was repealed. With certain exceptions 13/, employers may not terminate the service of pregnant workers who are employed under continuous contract, have been confirmed pregnant and have served notice of pregnancy to their employers. Pregnant employees dismissed before serving notice of pregnancy may serve such notice immediately after being informed of such dismissal. Their employers must then withdraw the dismissal; and

(e) Heavy, hazardous or harmful work: employers may not assign such work to pregnant employees who produce medical certification of their unfitness to handle it.

241. Employers who fail to grant maternity leave or who fail to pay maternity leave pay to eligible employees shall be guilty of an offence and liable on conviction to a fine of up to HK$ 50,000. Those who contravene the provisions on termination of employment shall be guilty of an offence and shall be liable on conviction to a fine of up to HK$ 100,000. They will also be required to effect such payments as are due to the employees in question in accordance with the provisions of the Employment Ordinance. Additionally, the employees may claim remedies against their employers for unlawful dismissal. If an employer fails to show that such dismissal was for reasons that the Ordinance recognizes as valid, the Labour Tribunal may order reinstatement or re-engagement, subject to the mutual consent of the parties. If the Labour Tribunal finds that an order for reinstatement or re-engagement is not appropriate in the circumstances of the case or either party does not consent to reinstatement or re-engagement, it may award terminal payments. If no order for reinstatement or re-engagement is made - and whether or not there is an award of terminal payments - the Labour Tribunal may, as it considers just and appropriate in the circumstances, award the employee compensation not exceeding HK$ 150,000.

Maternity protection for women in prison

242. When a prisoner is found - or suspected - to be pregnant, the Prison Medical Officer is immediately alerted. Pregnant prisoners receive special care on a 24-hour basis from the time that pregnancy is ascertained. Arrangements are made for them to consult obstetric doctors in hospitals outside the prison at appropriate intervals or as required. The Medical Officer will prescribe dietary supplements to ensure the good health of the mother and the foetus.

243. Pregnant prisoners give birth in public hospitals and are hospitalized in open wards. There were 11 such births in 1996 and eight in 1997.

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13/ The exceptions are where an employee is summarily dismissed for serious misconduct, or where an employee is serving a probationary period of not more than 12 weeks.

244. Prison Rule 21 14/ provides that the child of a female prisoner may be received into prison with its mother and remain there during the normal period of lactation. In 1996, 21 children were so "admitted"; 25 in 1997. When the child is over the age of nine months, or attains that age while in prison, the Medical Officer shall advise the Commissioner of Correctional Services whether it is desirable for the child to remain in prison with its mother. Notwithstanding that advice, the Commissioner may permit any child to remain in the prison until the mother has completed her sentence, or until the child attains the age of three years, whichever is the earlier.

245. Mothers whose children remain with them in prison are exempted from normal prison work in order to take care of them. But they may undergo occupational therapy if the Medical Officer considers that desirable. Milk powder, rations, and other daily necessities are provided to infants. So, too, are immunization injections and other forms of paediatric care. The Medical Officer will recommend an appropriate diet. Relatives and friends may bring them such things as clothing and toys during visits. When the children attain the age of three years, they are committed to the care of a relative or the Social Welfare Department, as appropriate.

Births to illegal immigrant mothers

246. Many illegal immigrants (most being from mainland China) enter the HKSAR with the purpose of giving birth here. This is because children born in the HKSAR - whether or not their mothers enter Hong Kong legally - have the right of abode in the Region if they are Chinese citizens and, at the time of their birth or at any later time, either one of their parents has been settled in Hong Kong or had the right of abode in Hong Kong 15/. For the past three years, some 2,000 to 3,000 children have been born to such mothers: between one in 20 and one in 30 of all live births in the HKSAR.

247. For humanitarian reasons, the Government does not return illegal immigrant mothers who are in an advanced stage of pregnancy (eight months). After giving birth, they usually return to the mainland of their own accord. Those who are unwilling to return to the mainland are repatriated in accordance with the law. But their repatriation is normally deferred until four weeks after the birth, subject to their fitness to travel. They have the right to appeal against removal to an independent tribunal and may remain in Hong Kong pending the outcome of such appeal. In most cases, their children remain in Hong Kong in the care of their fathers or other relatives.

Protection of children and juveniles

Convention on the Rights of the Child

248. In June 1997, China notified the Secretary-General that this Convention would continue to apply to the HKSAR and that China would assume responsibility for its application there with effect from 1 July 1997.

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14/ Sub-legislation under the Prisons Ordinance (Chapter 234).

15/ Article 24(1) of the Basic Law and schedule 1 to the Immigration Ordinance. In this respect, the law was much the same before the reunification and the practice described is of long standing.

Multidisciplinary measures against child abuse

249. In paragraph 27 of its concluding observations on the previous report, the Committee expressed concern "at the absence of a holistic policy for the protection of children from all forms of abuse". That concern has been shared by local commentators and was echoed by the Committee on the Rights of the Child (CRC) in its concluding observations on the United Kingdom's initial report under the Convention on the Rights of the Child in relation to Hong Kong 16/.

250. The Government's position remains as stated in paragraphs 10 to 13 of the updating report submitted to the CRC in May 1997. That is, the Convention covers various areas of government which are the responsibility of several different policy bureaux. NGOs and various advisory boards and committees assist those bureaux in the planning and decision-making process. Where a particular area overlaps the responsibilities of more than one bureau, there are well-established arrangements for coordination between the bureaux concerned. The protection of children and the "best interests of the child" are necessary considerations in the formulation of all relevant decision-making - whether respecting policies or legislative proposals. That is, they are taken into account as a matter of course. Specific laws deal with different aspects of the Covenant and the Convention. The impact of legislation and the execution of policies are monitored by the Legislative Council, the Ombudsman and the press, as well as by the policy bureaux concerned. These arrangements allow for flexibility and for a swift response to changing circumstances and to the concerns of the public. The Government sees no advantage in replacing them with some unified administrative system, a single children's ordinance, or a single monitoring system.

Institutional coordination

251. The CRC further suggested (paragraph 22 of its concluding observations) that the Government review the effectiveness of the present system of coordinating policies and programmes, especially as regards child abuse. As indicated above, where there is an overlapping of areas of responsibility of policy bureaux, there are arrangements for coordination. The "lead" bureau will, as a matter of course, co-opt other bureaux or departments in considering and dealing with the issues. Cooperation at the highest level of the Administration is provided by the Chief Secretary's Committee Policy Groups - which comprise the most senior representatives of the relevant bureaux. The Home Affairs Bureau (which is responsible for drafting reports under the various human rights treaties) acts as a bridge between the Government, the Legislative Council and the public, including NGOs. Where necessary it seeks advice from the Government's experts on human rights and international law to ensure compliance with the Convention. The Government considers that the present arrangements for institutional cooperation adequately serve Hong Kong's needs.

252. Thus, the Government maintains its view that the needs of vulnerable children are best served through the complementary division of work between - and close co-operation among - relevant NGOs and government professionals. We

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16/ See, in particular, the recommendation in paragraph 20 of the concluding observations of the CRC (CRC/C/15/Add.63) of 30 October 1996, reproduced in annex 20.

are aware that some commentators consider that such children would be better served and protected in other ways. But we have yet to see any convincing evidence in support of that view.

Working Group on Child Abuse

253. We explained the role and composition of the Working Group on Child Abuse in paragraph 122 of the previous report: it comprises representatives of government departments and welfare agencies and coordinates multidisciplinary efforts to tackle the problem of child abuse. We also explained how the success of the pilot "Tuen Mun District Multi-disciplinary Forum on Child Abuse" had encouraged the formation of five similar forums/committees seeking to promote understanding and cooperation among professionals dealing with child abuse at the district level. Now, there are 13 such bodies working to that end. Between January 1996 and June 1998, they organised over 210 district-wide educational and publicity programmes, attracting about 270,000 participants.

Measures against child abuse

254. The information in the following paragraphs is essentially as presented in paragraphs 436 to 442 of ICCPR1 in relation to article 24 of that Covenant. We include it here for convenient reference and because, we believe, it is relevant to the rights in article 10 of the ICESCR.

255. After each report of child abuse, a multidisciplinary case conference meets to agree a long-term welfare plan for the child concerned. Participants include social workers, doctors, teachers, police officers. If the assessment is that the family is unable to provide care, or that the child will be at risk in the home, the child concerned will be placed in residential care. The welfare plan approved by the case conference will be considered by the court whenever an application for a care or protection order is sought.

256. In 1996, we introduced new procedures for handling child sexual abuse cases, complementing the "Procedures for handling child abuse cases" which addressed all other forms of child abuse. Both sets of procedures are being updated and will be combined into a single, comprehensive volume with a view to improving coordination between the relevant agencies and disciplines. We expect to complete this within 1998.

257. The Government's ongoing public education campaign seeks to raise public awareness of the problem of child abuse and how to deal with it. Our aim is to encourage people to be alert to possible indications of child abuse and to assist our efforts to prevent it.

The Child Care Services Ordinance

258. The law prescribes minimum standards of care, education and protection for disadvantaged and vulnerable children whose parents cannot look after them. For example, the Protection of Children and Juveniles Ordinance (Chapter 213) defines the conditions under which children will be considered in need of care and protection and the Child Care Services Ordinance (Chapter 243) - formerly the Child Care Centres Ordinance - sets standards and requirements for services provided by such centres. Chapter 243 was retitled in September 1997, when it was amended to enable the formation of mutual help child care groups, to

prohibit unsuitable persons from acting as childminders and to improve the quality of care in child care centres.

Child abuse as crime: the legal framework

259. The Government is committed to protecting victims of child abuse and to bringing offenders to justice. Laws that exist for the achievement of that aim include the:

(a) Offences Against the Person Ordinance (Chapter 212): this Ordinance contains provisions on endangerment to life, ill-treatment or neglect children or young persons by those in whose charge they are, and other violent acts causing or tending to cause danger to life and limb; and

(b) Crimes Ordinance (Chapter 200): Parts VI and XII contain provisions to protect children from sexual abuse.

260. Because the taking of evidence and the construction of victims' accounts of child abuse require particular sensitivity and skill, the police have established dedicated units to handle such cases. These are the Police Child Protection Policy Unit and the Child Abuse Investigation Units. These units take an interdisciplinary approach to their work, with the police, social workers and clinical psychologists working closely together to investigate the cases while seeking to minimize the trauma of both victims and their families. Sometimes, the child victim's first account of alleged abuse is video-taped. The officer conducting the interview is specifically trained for the purpose. The trauma of giving evidence in court is reduced by allowing the video-taped testimony to stand as the victims' evidence-in-chief and permitting the victims to testify or be cross-examined by live television link. Ongoing training programmes are organized for police officers to keep them abreast of procedures and developments and to sensitize them to the special needs of child victims.

Child pornography and child sex tourism

261. The commercial exploitation of children for sexual gratification is not an extensive problem in Hong Kong: there have been just six prosecutions involving the production and distribution of child pornography. Nor is Hong Kong a destination for child sex tourism, though the police are aware of some 16 known paedophiles who regularly travel from Hong Kong to other Asian countries. Nevertheless, the Government shares the concerns that have been voiced both locally and in the international community and considers that even isolated occurrences of such activities are unacceptable. With these things in mind - and with a view to its obligations under article 34 of the Convention on the Rights of the Child 17/ - the Government is drafting legislation to create new

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17/ Article 34 of the Convention on the Rights of the Child provides that States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

offences relating to the possession, distribution and advertisement of child pornography - and procurement or employment of children for this purpose - and to give extraterritorial effect to existing measures against sexual abuse of children in the Crimes Ordinance (Chapter 200). We aim to introduce a bill into the Legislative Council in the 1998-1999 legislative session.

Protection of Children and Juveniles Ordinance (Chapter 213)

262. The Protection of Children and Juveniles Ordinance empowers the courts to grant care or protection supervision orders in respect of children or juveniles who have been abused, or who are beyond control to the extent that harm may be caused to them or others, or whose health, development or welfare has been or is being neglected. As at 30 June 1998, some 1,879 children or juveniles were under statutory care or protection.

263. The Director of Social Welfare can be appointed as the legal guardian under such an order. The child concerned is then committed either to the care of a person or institution fit for that purpose or to the supervision of a social welfare officer. Alternatively, the parent or guardian may be ordered to enter into a recognizance to exercise proper care and guardianship.

264. The Ordinance also provides that the Director of Social Welfare or any officer authorized by him may enter any premises with a view to the removal of any child or juvenile who appears to be in need of care or protection, for the purpose of medical, psychological or social assessment.

Hague Convention on the Civil Aspects of International Child Abduction

265. The Convention took effect in Hong Kong on 1 September 1997. It provides an effective international mechanism for ensuring the swift return of children wrongfully removed from - or retained in - their place of habitual residence in violation of custody rights. The Child Abduction and Custody Ordinance (Chapter 512), enacted in September 1997, gives domestic effect to the provisions of the Convention.

Working Group on Services for Youth at Risk

266. In paragraph 146 of the previous report, we explained that this Working Group - which operated under the auspices of the Co-ordinating Committee for the Welfare of Children and Youth at Risk 18/ - had recently completed a study of illicit use of drugs by young people. This made several recommendations for consideration by the Co-ordinating Committee and the Action Committee Against Narcotics (ACAN). Since then, the Working Group has examined other current youth issues, including teenage suicide, teenage sexuality, runaway youths and juvenile gangs.

267. The Working Group has continued to coordinate drug-prevention campaigns and other public education programmes. In January 1998, it produced and

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(c) The exploitative use of children in pornographic performances and materials.

18/ A committee chaired by the Secretary for Health and Welfare; see paragraph 135 of the previous report.

distributed a sex education training kit for parents. With the help of an independent research team, it has developed preventive programmes to help students at risk (see paragraph 269 below). It has also completed a study of the factors that place young persons at risk of becoming members of juvenile gangs and/or becoming runaways. Those factors include, for example, susceptibility to peer pressure, poor academic performance, anti-social behaviour, poor relationship with parents and history of delinquent behaviour among family members and friends.

268. The Government seeks to help young people at risk to become mature and contributing members of the community by engaging them in programmes designed for that purpose and by protecting them from exposure to undersirable influences. In this context "young people" means minors aged between six and 18 and young adults aged between 18 and 24.

269. Initiatives in this area include:

(a) Children and youth centre service: centre-based programmes designed to help young people, particularly those in disadvantaged circumstances, with their personal development;

(b) Outreaching social work: specially trained social workers make direct contact with target groups (such as teenage gangs and runaways) in the places - streets, amusement centres, and so forth - that they are known to frequent. The aim is to help young people who are socially maladjusted or who have behaviourial problems to reintegrate into school, the family and working life; and

(c) The school social work service: as its name indicates, this is a school-based service that aims to identify and help students with academic, social and emotional difficulties that - actually or potentially - place them at risk. On the basis of a study concluded in 1997, the Government has proposed a package of measures to improve this service.

Training and rehabilitation of young offenders and delinquents

270. Paragraph 125 of the previous report referred to the Community Service Support Scheme (CSSS) that had been introduced on a pilot basis in October 1994. This was a collaborative initiative between NGOs and the Social Welfare Department that aimed at rehabilitating juvenile offenders and "marginalized" youth through structured, community-based programmes and intensive supervised activities. An independent evaluation completed in late-1996 concluded that the pilot scheme was proving effective and started operation on a permanent basis from April 1998. The aim now is to help the target groups to integrate into mainstream education or to prepare them for employment. The Scheme provides structured day-training, which includes such elements as:

(a) Social group work;

(b) Community service projects;

(c) Job training packages; and

(d) Counselling groups.

Commission on Youth

271. As explained in paragraph 127 of the previous report, the Commission on Youth advises the Government on measures to promote the well-being of young people. Its "Charter for Youth" - published in 1993 - enunciates principles and ideals for youth development. Organizations subscribing to the Charter - of which the first was the Government - undertake to implement its provisions as best they can. As at 30 June 1998, some 400 organizations and 2,000 individuals had subscribed. The implementation of its provisions is reviewed every two years, most recently in December 1997.

272. The Commission undertakes research into issues that directly concern young people and into the attitudes of young people to issues of wider concern. It maintains close contact with other organizations that are concerned with youth development. Recent studies include research into:

The influence of the media on young people;

Supportive systems for young new arrivals; and

The moral values and civic awareness of young people.

These and other studies will contribute towards the development of policies.

Child suicide

273. In paragraphs 132 to 135 of the previous report, we explained that child suicides had been a concern for many years. We also described the measures that had been taken and those that were then in train. These included:

(a) A government media campaign to instil parents and children with a sense of the value of life and the importance of communication between children and parents;

(b) Training for teachers in the necessary diagnostic skills;

(c) A guideline package for schools on understanding student suicide; and

(d) Talks to students on mental health and stress management.

274. We also reported that the Government's Co-ordinating Committee for the Welfare of Children at Risk had commissioned research to develop a screening tool for the early detection of children at risk. The research team completed its task in 1997, recommending the introduction of programmes designed to teach students potentially at risk the skills and knowledge to cope with behavioural and emotional problems and to develop a positive self-image. The programmes are now operative and include such elements as interpersonal communications, parent-child relationships and community service.

275. Other Committee initiatives then in progress were:

(a) The Committee's Working Group on Services for Youth at Risk was assessing the possibility of improving the existing youth hotline services. The investigation began in May 1995. In August that year, on the basis of the

Working Group's recommendations, the Social Welfare Department agreed to subvent two new hotlines to give young people in distress access to trained, sympathetic and anonymous listeners; and

(b) Promoting the concept of a peer group support network to help young people develop positive self-images and life values, and to improve their skills in coping with crises. The networks are now in place and are operating throughout the various youth services.

276. The Committee's work has continued. In January 1997, it completed a review of Children and Youth Centre facilities, recommending that they be modernized in order to attract young people to use them and to engage in healthy pursuits.

277. These measures appear to be achieving their purpose. The number of attempted suicides appears to be declining:

| School year | Fatal cases | Attempts |
|---|---|---|
| 1993-1994 | 22 | 88 |
| 1994-1995 | 14 | 42 |
| 1995-1996 | 17 | 28 |
| 1996-1997 | 20 | 21 |
| 1997-1998 | 11 | 15 |

Employment of children and young persons

278. The position remains essentially as explained in paragraphs 128 to 131 of the previous report, though some of the provisions have been updated. Details are provided in annex 21.

Drug abuse

279. In paragraph 136 of the previous report, we stated that the number of drug abusers aged under 21 remained relatively low. But there had been increases in the past five years: from 0.96 per thousand of the 11 to 17 year-old population in 1989 to 3.78 in 1994. Newly reported cases had risen from 484 in 1989 to 1,654 in 1994. That trend is now showing signs of reversing: 3.02 per thousand in 1995; 2.57 in 1996; and 2.03 in 1997 19/. Similarly, the number of newly reported cases decreased from 1,151 in 1995, to 1,012 in 1996, and to 775 in 1997.

Profile of young drug abusers

280. Some 70.8 per cent of the 1,227 young abusers reported in 1997 were male. Their average age was 16. Some 49.4 per cent had taken heroin, 29.2 per cent had taken cannabis and 22.0 per cent had taken amphetamines. About 40 per cent had previous convictions; 37.3 per cent were employed and 19.6 per cent were studying.

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19/ The 1997 figure represents 1,227 individuals - 7 per cent of all cases reported to the Central Registry of Drug Abuse (CRDA). The absolute number is higher than the 1,107 reported in the first half of 1995 (para. 137 of the previous report). But it is down as a percentage of all reported cases (from 9.2%).

281. As in 1995 (paragraph 138 of the previous report), the new cases have remained much in line with the general trend. Some 68.3 per cent were male; their average age was 15.7. Heroin was the most popular drug (41.5 per cent), followed by cannabis (34.0 per cent) and amphetamines (24.2 per cent): cough mixture - which ranked third in 1994-1995 - now accounts for just 7 per cent of reported abusers. Some 34.1 per cent had previous convictions and 32.9 per cent were employed. Over 95 per cent had received at least secondary education.

The Government's response

282. The Government has maintained the "multi-faceted" strategy explained in paragraph 139 of the previous report. Good progress has been made in following up with various initiatives announced in the summit meetings on drugs held in 1995 and 1996. Action has been taken on 121 of the 125 initiatives 20/ put forward and progress is being made on the remaining four (see annex 22). The Government distributes quarterly reports on the progress of these initiatives to those who participated in the summits.

Control of drugs

283. In paragraph 140 of the previous report, we explained that the Dangerous Drugs Ordinance (Chapter 134) required medical practitioners and authorized pharmacies to comply with strict regulations governing the procurement and supply of such drugs. Similarly, the Pharmacy and Poisons Ordinance (Chapter 138) imposed controls on the supply of pharmaceutical products. This remains the case and - as before - these laws are regularly reviewed to ensure that they remain up-to-date and effective. For example, in March 1997, the Government amended the Dangerous Drugs Ordinance to provide for heavier sentences for adults who exploit persons under the age of 18 years in the illegal drugs trade.

284. The police, customs and the Department of Health continue to take vigorous action against those who supply illicit drugs. In 1996, to strengthen their capabilities in this regard, licensing control was extended to an additional 21 precursor chemicals that could be used for the manufacture of illicit drugs. To ensure the enforcement of these controls, the Customs and Excise Department was given additional staff for the establishment of investigation and intelligence units. And, in 1997, the Department of Health was given additional manpower to enable it to increase its inspections of pharmacies.

285. The Government continues to participate in all international organizations involved in the fight against illicit drugs, amongst others, the Commission on Narcotic Drugs of the United Nations. We also maintain close bilateral cooperation with other governments. Our ability to combat international drug trafficking was strengthened in May 1997, when the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was extended to Hong Kong.

Preventive education and publicity

286. The Government devises and conducts preventive education and publicity campaigns on the advice of the Action Committee Against Narcotics (ACAN). In

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20/ These include the 26-point "Forward Action Plan" referred to in paragraph 139 of the previous report.

1996-1998, these continued to focus on young persons. Important themes have included the message that so-called "soft" drugs are potentially as harmful as "hard" ones and the role of parents in steering children away from drugs and encouraging them to adopt a healthy lifestyle. In 1996-1998, the Government spent some HK$ 7.5 million on a range of programmes promoting these themes. The programmes included school talks, seminars and workshops for teachers and social workers, community involvement projects, a telephone hotline service, education and publicity through the media, and so forth. New initiatives in this context included an anti-drugs homepage on the internet, workplace-based talks for young workers, and "roving dramas" for students.

The schools

287. Drug education is an integral part of the school curriculum. Teachers inform their pupils about substance abuse and its effects. The Government reinforces these messages through regular talks in secondary schools and technical institutes. Pupils in the final year of primary schooling are also addressed. Some 458 such talks were given in 1997.

288. Between 1995 and 1997, the incidence of abuse of psychotropic substance among young persons rose from 1,209 to 1,280. In response, the Government adapted its talks to junior secondary school students to include information about the harmful effects of such substances and practical advice on how to refuse offers of these and other illegal substances. The message was reinforced through the distribution to schools of leaflets informing students about these substances and about the anti-drugs services operated by voluntary agencies. At the time this report was drafted, action was in hand to adapt these talks to younger primary school students and senior secondary school students.

289. Parents are also targeted. In 1997 - in cooperation with parent-teacher associations - 33 talks were given to 1,718 parents of secondary school students. Recently, such talks have been given to parents in their workplaces. Topics include identification of the signs of drug abuse, the role of parents in guiding children away from drugs, and resources available to parents whose children are already abusing drugs. A parent's guide to the issues is distributed to complement the talks.

The "Beat Drugs Fund"

290. This HK$ 350 million fund was established in March 1996 to promote activities aimed at reducing drug abuse, particularly amongst the young. Applications are invited through the mass media and the response has been encouraging. Between 1996 and 1998, a total of HK$38.5 million was granted to fund 98 projects. Those included initiatives in the areas of preventive education, treatment and rehabilitation, and research.

Services for young drug and substance abusers

291. The Against Substance Abuse Scheme (ASAS) was introduced in October 1995. Initially, it comprised a team of social workers specially trained to help young occasional substance abusers. A second team was set up in October 1996. The ASAS organizes intensive group activities to inform young substance abusers of the harmful effects of drugs, to help them develop "life skills" to resist temptations to substance abuse and to develop a healthy lifestyle. The teams

also organize volunteers, self-help groups, peer counselling groups and parent groups to help young substance abusers to reintegrate.

292. An independent evaluation completed in May 1997 affirmed that the ASAS was proving effective. The evaluation indicated that participants improved significantly in terms of actual substance abuse and in terms of their attitudes towards school, employment and law and order.

Educational services for young drug abusers

293. The Government subvents non-profit-making drug treatment/rehabilitation centres so they may provide young drug abusers the opportunity to receive education while undergoing treatment/rehabilitation. Centres may use the subvention for teachers' salaries, the purchase of classroom furniture, equipment, learning materials and so forth.

Treatment and rehabilitation

294. Government-funded programmes include the:

(a) Voluntary out-patient methadone programme run by the Health Department;

(b) Voluntary in-patient treatment programme run by the Society for the Aid and Rehabilitation of Drug Abusers (SARDA);

(c) Substance abuse clinics operated by the Hospital Authority; and

(d) Counselling centres run by the Hong Kong Christian Service and Caritas.

In 1996-1998, the Government spent about HK$ 550 million in this area.

295. Drug-dependent prisoners participate in a compulsory placement programme. Several voluntary agencies also operate treatment programmes for young drug abusers and provide rehabilitation, aftercare and counselling services to current and former abusers.

296. In 1998, the Government has provided funding for:

(a) An additional SARDA drug treatment and rehabilitation centre for young opiate abusers;

(b) Two new - NGO operated - drug treatment and rehabilitation centres for young drug abusers; and

(c) An additional counselling centre for psychotropic substance abusers. The work of this centre will focus on rehabilitation and will provide early counselling for marginal abusers.

297. The Government also assists voluntary agencies whose drug treatment and rehabilitation programmes are not directly subvented. Such assistance includes the provision of premises at nominal rent, rates relief, CSSA payments to eligible clients of residential programmes (to cover the cost of food and

accommodation), and a monthly block grant to enable them to employ teachers and provide education to clients in residential programmes.

298. In 1997, following an evaluation study conducted to assess the effectiveness of the non-subvented agencies, the Government invited those whose programmes had been found effective to apply for direct subvention. This will help them to improve their services.

Care for the elderly

Elderly Commission

299. The Elderly Commission was established in July 1997. It is the Government's principal advisor on policy issues concerning older people and on the services provided to them. The terms of reference are to:

(a) Advise the Government on the formulation of a comprehensive policy for the elderly, including matters relating to their care, housing, financial security, health and medical, psychological, employment and recreational needs;

(b) Coordinate the planning and development of various programmes and services for the elderly, and to recommend priorities for implementation having regard to manpower, financial and other resources; and

(c) Monitor implementation of policies and programmes affecting the elderly, and to make recommendations to the Government to ensure that agreed objectives are met.

300. The Commission comprises 11 non-official members - one of whom serves as chairman - and seven ex-officio members. The non-official members are appointed from relevant fields and professions. The ex-officio members are from relevant government bureaux and departments and the Hospital Authority.

301. Since its inception, the Commission has been consulted on several issues within its terms of reference. Perhaps the most demanding of these was a comprehensive assessment of the longer-term demand for housing and residential care services and the formulation of a strategy to meet them. The Commission has completed this task and will submit a report to the Chief Executive - at whose behest the study was undertaken 21/ - in September 1998.

Supporting family carers

302. The Government seeks to help elderly people to live with their families. This entails the provision of support services both to the elderly themselves and to their families.

303. In his 1997 policy address, the Chief Executive announced the establishment of two support and resource centres for carers. The first will be open in December 1998, the second in March 1999. They will teach carers the necessary knowledge and skills and provide them with moral and emotional support in times of need. Carers also have access to counselling at family services centres.

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21/ Chief Executive's policy address, October 1997.

304. Family members who take care of elderly persons at home can obtain support from subvented home help teams. These are operated by NGOs and offer meal deliveries, general personal care, housekeeping and escort services. A review of the service is in progress with a view to improving and expanding it.

305. Families that cannot look after their elderly members on a full-time basis have access to day care centres. These operate in daylight hours and provide personal care and limited nursing services to elderly people in declining health. Again, the centres are operated by NGOs and are subvented by the Government.

306. In unforeseen circumstances - and where carers are in need of respite - elderly persons have access to temporary residential care. We will shortly initiate a pilot "occasional day care service" with the same objectives.

Services for elderly people living in the community

307. Various social services are available to elderly people living in the general community. "Multi-service centres for the elderly" - run on a district basis - and Social Centres - run on a neighbourhood basis - provide services to meet social, recreational and other day-to-day needs. From October 1998, the Government will establish support teams for the elderly in each of the 36 multi-service centres. Their task will be to provide dedicated social networking and outreach services to vulnerable elderly single people living in their communities.

Health care services for the elderly living in the community

308. Key features are:

(a) Health centres for the elderly: as explained in paragraph 278 of the previous report, these provide preventive and curative services to persons aged 65 or above. They are staffed by multidisciplinary teams - doctors, nurses, dieticians, clinical psychologists, physiotherapists and occupational therapists - and are equipped to address the multi-dimensional needs of the elderly. We previously advised the Committee (para. 278 of the previous report) that we intended to open six new centres between 1995 and 1997. Now, there are seven. We are committed to providing five more by the end of 1998-1999 and another six in the financial year 1999-2000 (bringing the total to 18); and

(b) Priority attention at general out-patient clinics run by the Department of Health: patients aged 65 or above are accorded priority for medical consultations and dispensing services.

309. An initiative that will take effect from mid-1998 is the establishment of "visiting health teams". The teams will visit elderly centres and institutions to disseminate information on healthy ageing; offer professional advice to service providers; provide support and training to carers; and provide vaccinations for elderly people living in residential homes. The Government is committed to providing 18 teams between 1998 and 2000 (12 in 1998-99 and six in 1999-2000).

Enabling the elderly to lead an active and productive life

310. This is the cornerstone of government policy. The aim is to provide opportunities for elderly people to socialize, to take part in active recreation, to continue their education and to find employment.

311. The 250 social centres for the elderly are convenient drop-in venues for social interaction and leisure. They organize many activities such as pre-retirement/retirement courses, cooking classes, literacy classes, picnics, visits, health talks/checks, interest groups and mutual help/support groups. A holiday centre enables elderly people - including those who need constant care and attention - to take short breaks in the countryside. A subvented (NGO operated) bus service provides transport to elderly people wishing to take part in outdoor and recreational programmes.

312. The Urban and Regional Services Departments organize sports and recreational programmes for the elderly. These are free of charge. The elderly also enjoy discounts of up to 50 per cent on enrolment fees for programmes for the general public and for the use of recreational and sports facilities during non-peak hours.

Employment

313. Subvented NGOs offer retraining courses to equip or re-equip people aged 50 or above with skills that are in demand. Elderly job-seekers have priority access to the Labour Department's career counseling and placement services.

Concessionary benefits

314. The Senior Citizen Card Scheme was launched in 1994 with a view to encouraging public and commercial organizations to offer elderly people concessionary benefits and/or priority access to services. The scheme indirectly encourages senior citizens to remain socially active. Over 540,000 such cards have been issued and over 1,000 companies/organizations - with over 3,000 outlets - participate in the scheme. A consultancy has been commissioned to examine ways of refining and developing the scheme.

New life challenges: opportunities to serve the community

315. In October 1995, the Social Welfare Department introduced the Older Volunteers Programme on an experimental basis. The object was to recruit and train elderly persons as volunteer community workers. The programme proved successful and is to be merged with other outreach services to form the support teams discussed in paragraph 307 above.

Financial assistance to the elderly in need

316. This is discussed in paragraphs 156 to 160 above in relation to article 9.

Residential care services for the elderly

317. These services meet the needs of elderly persons who cannot receive adequate care at home. These comprise:

(a) "Homes for the aged" that provide basic care (currently, these comprise 6,800 subvented places and 1,300 self-financing places);

(b) "Care-and-attention homes" that provide personal and limited nursing care (8,000 subvented and 800 self-financing places);

(c) The new "nursing homes" that provide a higher level of care to elderly residents in frail health;

(d) Hospital infirmary beds for those requiring medical care; and

(e) Private homes: there are over 400 of these, providing care to about 22,000 persons. The Government buys places in these homes to meet the gap between demand for and supply of subvented places. This is known as the "Bought Place Scheme". As at June 1998, the scheme was paying for 1,200 such places.

318. In February 1998, to provide a higher level of care to residents in frail health, the Government opened a dedicated nursing home with a capacity of 200 places. By 30 June, two more were in operation, providing a further 500 places. A further three will open by March 1999, providing 700 more places, so bringing the total number of nursing home places to 1,400.

Problems faced

319. As the population gradually ages, there is increasing demand for residential care. Currently there are about 35,000 elderly people on the waiting list for subvented places (19,000 for care and attention homes and 7,600 for medical infirmaries) 22/. To tackle this, the Government has undertaken to provide an additional 3,300 residential places by 2001-2002 and to buy 2,400 more places from the private sector 23/.

Way forward (residential care)

320. Quantitative provision is, of course, important. But we are also conscious of the need to improve the quality of the services provided. In 1996, with that in view, we introduced an additional form of subvention - known as the "infirmary care supplement". This will enable homes to increase their nursing

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22/ In paragraph 280 of the previous report, we said that the then (1995) estimated shortfall for care and attention homes was 2,301. That "shortfall" was calculated on the basis of the planning ratio of 17 places per 1,000 persons aged 65 or above. It did not reflect the length of the waiting list. See note 23/ below.

23/ The figures cited in this paragraph might suggest that, by 2002, there will be a total shortfall of 27,900 places (35,000 minus 3,300 minus 2,400 minus 1,400). That scenario is somewhat simplistic, as it takes no account of turnover of existing places, withdrawals from the queue and new applicants. Taken together, these factors render it difficult accurately to estimate levels of shortfall as far forward as 2002. This is further complicated by the fact that persons in the queue do not always meet the criteria for admission but that is not assessed until they reach the "front of the queue". Thus, the length of the waiting list is not a reliable indicator of the genuine need for services.

support so that their residents will be able to remain in the same institutions, should they need a more intensive level of care. From 1998, a supplement will also be provided to improve services for residents with senile dementia.

321. Currently, the different types of residential institutions provide relatively specialized levels of care, designed to meet the needs of residents in different states of health. This can mean that residents whose health deteriorates may need to move to homes providing a more intensive level of care. This is disruptive and often stressful. It is clearly desirable that persons in care should be able to age in a familiar environment. To achieve this will mean ensuring that the homes have the necessary flexibility to meet the needs of persons in different states of health. With that in view, we are developing prototype homes equipped to care for elderly people with different degrees of impairment. The first of these will open in 1999 and will operate on a pilot basis for two years. The lessons learned during that period will provide a basis for determining how best to extend this approach to all residential care homes.

Housing for the elderly

322. This is discussed in paragraphs 373 to 380 below, in relation to article 11.

## Article 11
## Right to an adequate standard of living

Economic indicators

323. Hong Kong's GDP grew by 5.3 per cent in real terms in 1997, broadly similar to the average annual growth rate of about 5 per cent recorded during 1988-1997. This compared favourably with the corresponding growth rate of 2.6 per cent for all the OECD member countries taken together over the past 10 years. In 1997, Hong Kong's per capita GDP stood at HK$ 206,000 (US$ 26,600) in money terms, amongst the highest in Asia. Meanwhile, consumer price inflation moderated to 5.8 per cent in 1997, down from 9.1 per cent in 1995 and 6.3 per cent in 1996.

324. Median monthly domestic household income increased by 8.6 per cent in 1997, reaching HK$ 19,000 (US$ 2,500) in money terms. During the past 10 years, median household income has grown by a total of 211 per cent, outpacing consumer price inflation during the period by an aggregate of 34 per cent.

325. Labour wages have also increased notably by 10 per cent per annum in money terms during 1988-1997. After netting out consumer price inflation, the rise in real terms was 1 per cent. Among the major economic sectors, wages in financing, insurance, real estate and business services have grown most rapidly - at an average annual rate of 3 per cent in real terms. This was followed by wages in personal services (3 per cent), transport services (2 per cent), wholesale, retail and import/export trades, restaurants and hotels (1 per cent) and the manufacturing sector (0.5 per cent).

326. The Hong Kong economy underwent a distinct downturn after the fourth quarter of 1997, upon profound shocks from the substantial currency depreciation and severe financial turmoil in East Asia. Reflecting a large regional risk premium, local interest rates rose and set off sharp corrections in both the stock and property markets. Domestic demand - especially consumer demand -

slackened considerably. And, from early-1998, exports also suffered a sharp slow-down due to the fall-off in regional demand. As a result, GDP in the first half of 1998 contracted by 4.0 per cent in real terms vis-à-vis the same period in 1998 - a marked downturn from the 2.8 per cent growth in the fourth quarter of 1997 and the 5.3 per cent growth in 1997. Nevertheless, the Hong Kong dollar held stable against the United States dollar, backed by the robustness of the linked exchange rate system, a well supervised and generally healthy banking sector, tight fiscal discipline and strong reserves.

327. Domestic demand is expected to remain weak for the rest of 1998, against subdued local sentiment, relatively high interest rates and the more uncertain business outlook. External trade will continue to be curtailed by the plunge in import demand in the region. For 1998 as a whole, Hong Kong's real GDP is forecast to contract by around 5 per cent. At the same time, consumer price inflation is forecast to ease significantly to 3.5 per cent - the lowest in 13 years. This reflects expeditious cost/price adjustments to weather the impact of the regional financial turmoil.

328. Recently, some positive signs have been emerging although these may take time to translate into a more noticeable pick-up in sector activity. Local interbank interest rates have eased considerably. In the property market, activity has picked up and the decline in flat prices also seems to have been arrested somewhat. Local share prices have rebounded. Inbound tourism has been increasing for three months in succession. The unemployment rate has also shown signs of stabilizing. Externally, the financial situation in other parts of Asia has turned more stable upon the rebound of the Japanese yen.

Income distribution

329. Hong Kong's Gini coefficient for 1996 was estimated at 0.518 in 1996 1/: higher than 1986 (0.453) and 1991 (0.476) 2/. This is partly due to the structural transformation of the Hong Kong economy from a manufacturing-based to a highly service-oriented economy over the past decade. That transformation has led to a strong and increasing demand for professional, managerial, supervisory and technical personnel. And, in consequence, wages for those jobs have risen faster than those for jobs with a lower level of knowledge and skill.

330. This development conforms with the predictions of Kuznet's theory that - when they undergo dynamic growth and structural changes - it is common for

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1/ As the Gini coefficient is computed from the household income distribution obtained from the 1996 Population By-census, the 0.518 estimate for 1996 is already the latest available figure. Further update will only be available upon the completion of 2001 Population Census.

2/ For the benefit of Hong Kong readers who have not read the previous report, the Gini coefficient, which takes a value between zero and one, is often used as an indicator of diversity in household income distribution. A value of zero indicates no diversity in the household income distribution: i.e. every household has an equal share of the total household income. A value of one means one household owns the total household income and the rest own none. Neither extreme occurs in any real economy. In general, the higher the value of the Gini coefficient, the greater the income diversity.

economies to face increasing income disparities. Income distribution will become more even as such economies gradually mature and stabilise 3/.

331. What is more important is that Hong Kong's economic system does not entrench income disparity. Being a free market, there is no barrier or impediment to job entry in different sectors/occupations/professions. Through the exercise of talent and hard work, all our people raise their incomes and improve their standard of living. Hong Kong has invested heavily in education, training and retraining to enable workers to adapt to changing market conditions and to increase their earnings potential. It will continue to do so.

332. A conceptual distinction must also be drawn between income disparity and poverty. The Gini coefficient is only a snap-shot view of income distribution at a specific point in time. But a "wide angle shot" over the past decade reveals that the lower income groups have continued to share the fruits of growing economic prosperity. During that period, their households have registered increases in both nominal terms and real terms. As an illustration, the proportion of households with monthly incomes below $8,000 (at 1996 constant prices) fell from 31 per cent in 1986 to 16.5 per cent in 1996. And Hong Kong's social programmes, mainly in the areas of public housing and public assistance, provide additional support to the low income groups, so helping to narrow the effective income disparity amongst households in different income brackets.

Economic restructuring

333. In the past 10 years, Hong Kong has developed into a highly service-oriented economy. In 1987, the service sectors as a whole contributed 70 per cent of our GDP. In 1996, they contributed 84 per cent. Whilst adhering to its market-oriented economic policy, the Government has embarked on measures to engender a more business-friendly environment to ensure that the Region remains attractive to investors. These measures include encouraging enterprises to develop high value-added industries and services, and initiatives such as the "Helping Business Programme" and the "Services Promotion Programme" that seek to reduce red tape and to maintain a simple and prudent fiscal policy.

334. These measures will help to maintain existing employment opportunities and create new ones. At the same time, as explained in paragraphs 58 to 60 above in relation to article 6, there are corresponding programmes to improve the quality of our workforce through education, training and retraining in order to prepare it for the new and expanding fields.

Supply of food

335. As stated in paragraph 164 of the previous report, the Government recognizes the right to freedom from hunger. Hong Kong continues to be both an importer and primary producer of food and has sustained its ability to ensure an adequate supply of food for the whole community. The area of land available for agricultural use is increasingly limited and research to ensure its economical and productive utilization is a continuing necessity. The Government maintains its pledge to:

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3/ See Kuznets, Simon (1955), AEconomic Growth and Income Inequality@, American Economic Review 45:1-28.

(a) Provide efficient, orderly and hygienic wholesale markets for fresh primary food produce;

(b) Apply the minimum controls necessary to maintain supplies of imported staple foodstuffs. The principal control is to ensure that rice stocks are adequate for 45 days' consumption. To that end, only merchants with the capacity to maintain such stocks may register as rice importers;

(c) Promote the development and productivity of such agriculture and fisheries as are economically viable and as contribute to the food supply;

(d) Maintain and implement legislation to control animal and plant disease; and

(e) Assist in the identification of alternative sources of supply in the event of shortages.

Agricultural production

336. The following table sets out the statistics for local agricultural production in 1981, 1991 and 1997.

| Produce | 1981 | 1991 | 1997 |
|---|---|---|---|
| Vegetables (tonnes) | 176 000 | 105 000 | 64 000 |
| Cultivated land for vegetables (ha) | 2 630 | 1 640 | 790 |
| Pigs (no.) | 797 030 | 313 420 | 305 600 |
| Chickens (no.) | 17 388 000 | 13 082 000 | 7 450 000 |

337. Vegetable production has maintained its downward trend as agricultural land continues to be given over to public works and the urbanization of the rural New Territories. In 1997, 67 per cent of vegetables consumed in the HKSAR were imported from mainland China. An inspection system is in place at import, wholesale and retail levels to ensure that imported vegetables are free of pesticide residues.

338. The decline in the production of pigs and chickens reported in paragraph 167 of the previous report (which explained that smaller farms were closing following implementation of the Livestock Waste Control Scheme as a water pollution control measure) has stabilized. This is because the remaining, larger farms have proved economically more capable of coping with waste control requirements. However, chicken farms continued to close in the face of increased competition from chickens imported from mainland China. This trend was exacerbated in late-December 1997, when all local chickens were slaughtered - and all chickens farms were closed - to eradicate H5 avian influenza (see paragraphs 424 to 429 below in relation to article 12). Operations resumed after thorough cleansing and disinfection and by mid-1998 most were back in operation.

339. In paragraph 168 of the previous report, we said that about 50 per cent of HKSAR arable land was idle. That figure has since risen to 60 per cent. This reflects the continued effect of land "frozen" by absentee landowners and the landowners' practice of letting out land for storing containers and construction materials, as work sites for scrap-breaking, and for parking heavy vehicles. The extension to the rural areas of the land-use control provisions of the Town

Planning Ordinance, and statutory zoning to preserve prime agricultural land for farming have enabled us to zone some 3,121 hectares for agriculture. It is expected that these measures will prevent further deterioration.

340. Paragraph 171 of the previous report explained how the Government's "agricultural land rehabilitation scheme" helped to restore arable land to cultivation by assisting farmers to obtain land for crop farming. At that time (1994-1995), the scheme had helped to restore some 66 hectares of fallow land to cultivation since its implementation in 1988. The rate of restoration has continued at the rate of about 10 hectares a year. As at 30 June 1998, the cumulative total had reached 105 hectares, exceeding the 100 hectares projected in the previous report for the end of the century. These efforts will continue.

Fisheries

341. Both locally and regionally, fish stocks have been dwindling and vessels have to venture further afield to make economic catches. To conserve fisheries resources, the Government is spending $100 million on the deployment of artificial reefs in marine parks and other coastal waters. A recently completed consultancy on fisheries resources and operations in local waters, and related public consultations will help us to formulate an appropriate fisheries management strategy. At the same time, we continue to support the fishing industry in the ways described in paragraph 172 of the previous report (through applied and adaptive research; by designing and introducing new craft, gear and equipment; by providing technical, managerial and financial assistance; and by assuming specific development responsibilities).

342. The Government also supports the development of marine fish culture, which is practised in 26 designated zones. In 1997, the capture fishing industry and the marine fish culture industry produced some 186,000 tonnes and 2,960 tonnes of fish respectively. In March and April 1998, a bloom of marine algae - known as "red tide" and commonly found in other parts of the world - killed a large proportion of farmed fish. However, the loss accounted for only 1 per cent of Hong Kong's annual fish consumption. The Government has made available $200 million in low interest loans and $17 million in ex gratia allowances to help affected mariculturists re-establish their businesses. We have commissioned consultants to propose appropriate measures to improve the monitoring and management of red tide and to reduce its impact on mariculture.

Wholesale markets

343. As explained in paragraph 173 of the previous reports, the Government administers and manages wholesale markets for fresh primary food produce. It has built two integrated wholesale market complexes for vegetables, fruit, eggs, freshwater fish and poultry. High standards of cleanliness and hygiene are enforced, particularly in the light of the experience gained in 1997 from our response to the "avian flu" outbreak discussed in paragraphs 424 to 429 below in relation to article 12.

Housing

The need

344. In paragraph 174 of the previous report, we explained that in early 1995 some 181,000 households (495,300 persons) were inadequately housed. An estimate

made in June 1998 indicated that the number had fallen to 170,000 households (437,000 persons). As before, the term "inadequately housed" refers to persons living in squatter areas on government land, in temporary housing, in cottage areas, in non-self-contained flats, in roof-top structures, or in shared accommodation in the private sector.

Housing policy: the Government's commitment

345. The Government remains committed to addressing the long-term housing needs of Hong Kong by helping all households gain access to adequate and affordable housing, and - for the reasons set out in paragraph 346 below - to encouraging home ownership in the community. The Government's policy is to build an average of 50,000 flats a year in the public sector and to form land and build the necessary infrastructure to meet the long-term demand of about 35,000 private flats a year. This objective forms part of the long-term housing strategy described below.

Long-term housing strategy

346. In February 1998, the Government published a white paper on long-term housing strategy. The paper followed the review foreshadowed in paragraph 183 of the previous report. It took into consideration the results of a public consultation exercise conducted in the first half of 1997 and built on the foundation provided by the housing initiatives announced by the Chief Executive in July and October 1997. It sets out clear housing targets, of which the most important are to:

(a) Produce an average of 50,000 flats a year in the public sector, and continue to form land and build the necessary infrastructure to meet the long-term demand of about 35,000 private flats a year based on current projections. Actual production will, however, depend on developers' commercial decisions;

(b) Achieve a home ownership rate of 70 per cent by 2007. Currently it is 52 per cent; and

(c) Reduce the average waiting time for public rental housing to three years by 2005. At present it is six and a half years.

347. To meet these objectives, we will

(a) Regularly and accurately assess housing demand;

(b) Provide a sufficient supply of land, together with supporting infrastructure; and, without in any way compromising standards of quality and safety, shorten development procedures and relieve constraints in the construction industry;

(c) Draw up a long-term flat production programme and put in place efficient mechanisms for monitoring progress and solving problems;

(d) Create conditions to enable the private sector to make the fullest possible contribution towards meeting the demand for housing. At the same time, we will continue to monitor the private property market and, if necessary, take measures to avoid drastic fluctuations in prices and discourage property speculation;

(e) Continue to implement subsidized housing schemes to enable those in the relevant income groups to buy their own homes;

(f) Continue to provide public housing at reasonable rents to those who cannot afford any other type of housing; and

(g) Implement initiatives to address the housing needs of groups in special need.

Housing legislation

348. As explained in paragraph 176 of the previous report, the right to housing is protected under a range of laws covering such matters as land resumption, provision of public housing, bedspace apartment safety and service standards of estate agents. Details are provided in annex 23.

Coordinating housing policy

Role of the Housing Bureau

349. As explained in paragraph 179 of the previous report, the role of the Housing Branch (now known as the Housing Bureau) is to develop policies and strategies for the provision of housing - both public and private - and to coordinate government action in the execution of housing policies and programmes. The aim is to provide an adequate supply of housing at affordable prices or rents to meet demand in the public and private sectors. To achieve this, the Bureau monitors the performance of the residential property market closely and coordinates interdepartmental action relating to the housing production process.

Public housing

Work of the Housing Authority

350. As explained in paragraph 184 of the previous report, the Hong Kong Housing Authority was established under the Housing Ordinance (Chapter 283) in 1973. It is an independent, statutory body responsible for carrying out Hong Kong's public housing programmes. Its prime objective is to provide affordable housing to the needy in accordance with the Long Term Housing Strategy.

351. The Housing Authority plans and builds public housing - and associated amenities - either for rent or for sale. It also provides interim accommodation to families who do not qualify for public rental housing but require shelter. It is also the Government's agent for land clearance and prevention of squatting. The Government provides funding support for the public housing programme and land for public housing on concessionary terms.

352. As at 30 June 1998, about 2.2 million people (33% of the population) were living in public housing estates with a total stock of about 656,000 flats.

Work of the Housing Society

353. As explained in paragraph 186 of the previous report, the Hong Kong Housing Society is a non-profit-making organization whose objective is to

provide housing - both for rent and for sale - for specific low and middle-income groups. As previously reported, the Government grants the Society land at concessionary premium and loans at low rates of interest.

354. The Housing Society continues to administer the Sandwich Class Housing Scheme and the Home Starter Loan Scheme on behalf of the Government; see paragraphs 368 to 371 below.

Eligibility for public rental housing

355. As explained in paragraph 189 of the previous report, eligibility for public rental housing is contingent on applicants' incomes falling within prescribed income limits. For example, the monthly limit for a four-person family is now $17,700. An asset test will be imposed at the end of this year to ensure that public rental housing flats are allocated to families in genuine need. The applicants and the majority of their family members must have resided in Hong Kong for at least seven years and must not have owned any private domestic property within two years preceding application. Some commentators consider that the "majority rule" discriminates against new arrivals from mainland China. This issue is addressed in paragraphs 381 to 382 below.

Waiting list for public housing

356. As at 30 June 1998, the nominal waiting list comprised about 147,000 applications. However, as explained in paragraph 190 of the previous report, many applications are submitted by existing public housing tenants and some applicants are ineligible for one reason or another. So it is likely that - as before - the effective length of the waiting list is about 80,000 applications. The list breaks down as follows:

| Type of accommodation | Number of applications on waiting list | Number of flats allocated (1997-1998) |
|---|---|---|
| One-person | 20 400 | 2 300 |
| Two-person | 35 600 | 2 600 |
| Three-person | 40 900 | 3 000 |
| Four-person | 35 200 | 3 000 |
| Five-person and above | 15 400 | 1 700 |

357. As stated in paragraph 346 (c) above (in relation to the Long Term Housing Strategy), the Government has pledged to reduce the average waiting time for a public rental flat. Currently, that average is six and a half years. We aim to reduce it to under five years by 2001 (almost a 50 per cent improvement on 1990 when the waiting time was nine years); to four years by 2003; and to three years by 2005. To achieve this, we will increase the supply of new or refurbished flats to families on the waiting list from an annual average of 14,000 flats to 20,000 flats beginning in the year 2000.

Rents and rent assistance

358. Rent levels for public housing are determined on the basis of tenants' ability to pay. Other factors - such as location, facilities, operating costs,

rates and inflation - are also taken into account: these vary between estates. It is a statutory requirement that the overall median rent to income ratio of households cannot exceed 10 per cent 4/. The current public housing rents represent a ratio of about 9 per cent.

359. Tenants facing temporary financial hardship may be granted rent reduction of 50 per cent for up to two years. Those who continue to face difficulty after two years are normally required to transfer to flats with lower rents in the same district. They then receive a domestic removal allowance and are granted a rent-free period of one month. Households with elderly or disabled members are exempted from this requirement.

360. Tenants with long-term financial difficulties may seek help under the Comprehensive Social Security Assistance Scheme (CSSA); see paragraphs 137 to 155 above in respect of article 9. If found eligible, they receive a rent allowance for the full amount payable and money for subsistence.

Interim housing

361. In paragraphs 209 and 210 of the previous report, we explained that temporary housing areas (THAs) provided accommodation for the homeless, including for example people affected by clearances, fires and natural disasters but who were ineligible for permanent public housing. THAs consist of single-storey and two-storey structures with basic facilities. At the end of June 1995, there were 37 THAs housing 41,200 people.

362. We also reported that a clearance programme was in progress with a view to rehousing the majority of THA residents by 1997. And we envisaged clearing all pre-1984 THAs by 1996.

363. The programme has made steady progress. All the pre-1984 THAs have been cleared and - as at 30 June 1998 - there were just 15 THAs housing about 15,000 people. The Government will phase these out by the year 2000. However, for the foreseeable future there will be families who do not qualify for public rental housing but require shelter for one reason or another. To meet their needs, the Housing Authority will provide a new form of "interim accommodation". This will consist of flats in purpose-built high-rise blocks. The standard of accommodation will be significantly better than that available in traditional THAs.

Subsidized home ownership schemes and loan schemes

364. The Government believes that home ownership is the aspiration of many in the community: a view strongly supported by the popularity of the schemes designed to meet that aspiration (see below). We also believe it to be desirable because it fosters a sense of belonging and helps families to provide for their own future financial security. Our target is to achieve a home ownership rate of 70 per cent by 2007: at present, it is 52 per cent. But private sector homes remain beyond the reach of many families. We will continue to help those who are eligible to buy their own homes thrcugh the various schemes described below.

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4/ Housing Ordinance, section 16(1)(b).

Sale of public rental housing flats to tenants (Tenants Purchase Scheme)

365. We initiated this scheme in January 1998. The aim is to give public housing tenants the opportunity to own the flats they are living in. We expect that at least 250,000 families will do so over the next 10 years. Under this scheme, the price of a flat is determined by its "adjusted replacement cost" 5/. In practice, this results in an initial discount equivalent to about 70 per cent of the market value of the flat. Because the objective is to encourage people to be owner-occupiers, and not to provide them with a means to make a quick profit at public expense, owners who sell flats so purchased on the open market must repay the discount to the Government.

366. The scheme is progressing in phases. The first phase, involving about 27,000 households, has been well received. Another 18 estates (84,000 flats) will be brought into the scheme over the next three years.

Home Ownership Scheme and Private Sector Participation Scheme

367. As explained in paragraph 198 of the previous report, these schemes enable middle- and low-income families 6/ to buy their own homes at prices well below market value (50 per cent below on average). As at 31 December 1997, about 230,000 flats had been built under the two schemes. Their combined effect has been to increase the rate of home ownership in the public sector from 5 per cent in 1982 to 23 per cent in 1995, and to 28 per cent as at 30 June 1998.

Sandwich Class Housing Scheme

368. As explained in paragraph 202 of the previous report, this scheme aims to meet the needs of the "sandwich class", comprised of families who are not eligible for the low-income housing schemes but lack the resources to purchase reasonable accommodation in the private sector. They include numerous young managerial and professional couples who contribute significantly to Hong Kong's economic well-being. Their major difficulties are finding sufficient cash for the initial down payments 7/.

369. As described in paragraph 202 of the previous report, the scheme comprises a main scheme and a loan scheme. It is targeted at families living in private rented accommodation with monthly incomes currently between $33,001 and $60,000. The main scheme entails granting land on concessionary terms to the Housing Society to build flats for sale to the sandwich class. As at 30 June 1998, about 7,000 such flats had been sold. The loan scheme offers loans of up to $550,000

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5/ Under the Aadjusted replacement cost@ approach, the price of a flat is based on the present-day cost of replacing it, with adjustments to take into account age, location and other relevant factors.

6/ As a general rule, family income must not exceed HK$ 33,000 a month (the Committee will recall that in 1995 the limit was $25,000: paragraph 199 of the previous report). But the rule does not apply to public housing tenants. The purpose of the exception is to encourage wealthier tenants to move out of public rental housing, making room for needier families.

7/ Mortgage lending is restricted to a maximum of 70 per cent of the purchase price. The aim is to maintain lending within prudent limits.

at low interest to assist eligible families to purchase their own homes in the private sector. At present, the loan scheme has a total capitalization of $3.38 billion. As at 30 June 1998, some 5,200 loans - totalling $2.5 billion - had been granted.

370. We previously reported that we intended to build 20,000 flats under the main scheme by the year 2000. We recently reviewed this target and decided to suspend further construction of such flats, with the exception of projects (involving about 4,000 flats) on which construction was already under way. Residential property prices have dropped significantly in the past year and good quality flats in the private sector are now affordable to the sandwich class. We will, however, continue to provide loans for down payments to this group to allow them a wider choice.

Home Starter Loan Scheme

371. This scheme was initiated in 1998 with a capital of $18 billion provided by the Government. Its purpose is to help first time home buyers purchase their own homes. The Housing Society is the operating agency and the scheme is expected to benefit 30,000 eligible families 8/ in "tranches" of about 6,000 loans a year in each of the next five years. The loans will attract a low rate of interest and will be for a maximum amount of $600,000. In June 1998, we decided to advance to 1998-1999 some 6,000 loans originally "earmarked" for 1999-2000.

Home Purchase Loan Scheme

372. As explained in paragraph 201 of the previous report, this scheme enables public housing tenants and families in the low-income group to borrow money - interest free - towards the cost of private sector flats. The conditions remain as previously explained. That is, public housing tenants who have borrowed under the scheme must surrender their rental flats. Borrowers can choose between:

(a) Loans to cover down payments, conveyance fees and stamp duty; and

(b) Mortgage subsidies for a total of 48 months.

Currently, the maximum individual loan amount for an applicant not living in public rental housing remains $400,000. Those choosing the mortgage subsidy option still receive $3,400 a month. The corresponding sums for public housing tenants remain $600,000 and $5,100 respectively. By the end of 1997, about 20,000 loans and 1,300 subsidies had been granted since the scheme began in 1988.

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8/ To be eligible, households must have monthly incomes of below $70,000 and have not owned any domestic property within the past 10 years. They must not possess net assets in excess of $1.2 million.

Groups in special need

Single person households

373. In 1997, for the reasons in paragraph 200 above (in relation to article 10), there were about 270,000 single person households in Hong Kong: about 14 per cent of all households. About one third of these persons were elderly. By 2005, the number of one-person households is expected to rise to about 338,000, an increase of 25 per cent.

374. Many of these individuals already live in public rental housing, subsidized home ownership flats or adequate private sector accommodation. But others do not, so - from 1998 to 2001 - the Housing Authority plans to allocate 36,500 small flats to eligible single persons in genuine need. Over 70 per cent of these will be allocated to the elderly.

Housing policy for the elderly

375. The Government's policy remains to give elderly people in need priority access to public housing and to ensure that there is an adequate supply of flats with facilities and services suited to them. At the end of 1997, some 509,000 people aged 60 or above - over half Hong Kong's elderly population - were living in either public rental housing or in subsidized home ownership flats.

Preferential housing schemes for the elderly

376. To encourage elderly people living in inadequate private sector accommodation to join the waiting list for public rental housing, we have opened five Housing Information Centres in districts with large concentrations of elderly residents. Their purpose is to alert elderly people to their housing entitlements. We will set up a sixth centre by the end of 1998.

377. As at 30 June 1998, more than 40,000 elderly persons had benefited from the various housing priority schemes. These include, for example, the Single Elderly Person Priority Scheme, the Elderly Persons Priority Scheme (for two-person and three-person households), and the Families with Elderly Persons Priority Scheme. Currently, there are about 9,000 single elderly persons on the waiting list. Our target is to allocate public rental flats to them within two years of application. But those whose situations warrant compassionate consideration can be placed immediately.

378. The Government encourages families to live with - and take care of - their elderly members. This is because we believe older persons are happiest living in their own homes in the company of their families and that their families are best placed to care for them. We will introduce new measures to further this policy by the end of 1998.

Special accommodation for the elderly

379. Elderly people not living with their families have access to two types of accommodation in public rental estates:

(a) The Housing for Senior Citizens Scheme provides specially designed rental housing units with warden service. Currently, there are 6,400 such units. A further 4,000 will be built between 1997-1998 and 2001-2002; and

(b) Purpose-built and self-contained flats in rental estates: over 21,300 flats have been allocated to the elderly over the past four years. Another 22,700 flats will be provided between 1998-1999 and 2001-2002.

Housing programme for the elderly in the middle-income group

380. For obvious reasons, efforts to provide housing for the elderly have focused on those who are most in need. But we are conscious that there exists a sandwich class of elderly persons in the middle-income group whose needs have yet to be addressed. Essentially, they require affordable, purpose-built accommodation with integrated care services. With that in mind, we have initiated a pilot Senior Citizen Residence Scheme comprising 500 small flats in the urban areas for lease for life to elderly persons. Residents will be provided with medical and other facilities on site.

New arrivals from mainland China

381. The Government advises new arrivals of available housing facilities on their arrival in Hong Kong. It also helps them to register for public housing. Spouses or dependent children of existing tenants in public housing may live with them if they so wish.

382. Otherwise, however, applicants for public rental housing must have at least seven years' residence in Hong Kong before they are eligible for public rental flats. Where applicants have families, more than 50 per cent of family members (including the applicant) must have at least seven years' residence in Hong Kong in order to qualify. All locally born children are considered to have met the residence qualification provided that at least one parent has satisfied the residence rule. Some commentators consider that this rule discriminates against new arrivals. But the Government considers it fair and reasonable that scarce housing resources should first be allocated to meet the needs of longer term residents and locally born children. Permanent resident status is not a qualification for public rental housing.

Squatters

383. Despite the increasing influxes of new arrivals, the squatter population was contained at around 230,000 (as at June 1998) as a result of our ongoing clearance and rehousing programmes. This figure includes both illegal squatters on government land and squatters on private land, some of whom live in structures that are both substantial and more than adequate in housing terms.

384. The Government is determined to solve the housing problem of the inadequately housed squatters over time. All urban squatters on government land have now been offered rehousing. The next target is to clear and rehouse 12,000 squatter families over the next five years. This entails:

(a) Removing structures that are exposed to the risk of landslips;

(b) Clearing land for public development; and

(c) Removing structures to improve the environment or living standards.

385. Squatters who are not affected by these clearances are encouraged to join the waiting list for public rental housing.

Bedspace apartments

386. In paragraph 214 of the previous report, we explained that bedspace apartments (the so-called "cage homes") were private dwellings in which bedspaces were rented to people who, for personal reasons, required very basic accommodation. As at 30 June 1998, there were 101 such premises housing about 2,300 persons: a decline of 33 per cent and 28 per cent respectively from the position reported in the previous report (150 premises housing about 3,200 persons). Most are located in densely-populated urban areas and have been in existence for many years. Rents are comparatively low. To maximize earnings, operators usually install as many bedspaces as possible. This has resulted in overcrowding, high fire risks and other hazards arising from structural strain.

387. In paragraph 40 of its concluding observations on the previous report, the Committee strongly reiterated its recommendation that the Government should undertake, as a matter of high priority, the total eradication of "cage homes".

388. As stated in paragraph 215 of the previous report, the Government shares the concerns that the Committee and local commentators have expressed about living conditions in bedspace apartments. But the fact remains that there is a residual demand for low-cost accommodation in convenient, core urban locations. This is demonstrated by the reluctance of many bedspace apartment lodgers to accept better alternative accommodation outside these areas (see paragraph 392 below). Therefore, we maintain that it would be wrong to outlaw this kind of accommodation. Instead, the policy remains to ensure that bedspace apartments meet the statutory fire and building safety standards. Our proposals for achieving this objective were explained in paragraph 217 of the previous report and in our responses to questions 30 and 36 on the Committee's list of issues in relation to the previous report 9/. Those responses are reproduced in full in annex 24 to this report.

389. The Committee will recall that the necessary legislation - the Bedspace Apartments Ordinance (Chapter 447) - was enacted in 1994. Operators of bedspace apartments were given an exemption period to enable them to continue operation and to carry out the improvement works necessary to comply with the building and fire safety standards prescribed in the Ordinance. Thereafter, only premises that completed the requisite improvements were to be licensed for continued operation. During the exemption period, the Licensing Authority increased inspections of bedspace apartments to ensure basic fire safety. Fire fighting and prevention equipment were provided for or installed free of charge.

390. The exemption period expired n 30 June 1998. At that time, the Office of the Licensing Authority was in the process of inspecting the 101 premises that remained in operation, to assess the progress of the requisite improvements. The operators of those premises were being urged to complete the requisite improvements and to apply for the licences necessary for their continued

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9/ Document E/C.12/Q/HON.1.

operation 10/. At the time of drafting this report, the Licensing Authority was considering taking enforcement against those that remained unlicensed.

391. When initiating the licensing scheme, we envisaged that some lodgers would be displaced as some operators might be unable or unwilling to meet the requisite safety standards and choose to reduce bedspaces or to cease operation. We have undertaken that no lodger will be rendered homeless as a result of the licensing scheme. Any displaced lodgers will be assisted with rehousing if they so require.

392. Displaced lodgers aged over 60 - or who have special medical or health needs - may be eligible for admission to welfare institutions or for compassionate rehousing in public housing estates. Displaced lodgers aged under 60 may apply for admission to the singleton hostels operated by the Home Affairs Department. There are 38 such hostels with a total of 548 places. All are located in the urban areas. An additional 300 spaces will be available from September 1998, when we open a purpose-built multi-storey hostel in Kowloon. This will be reserved for displaced bedspace apartment lodgers. A further 270 places will be available from 2001 when we complete work on another such hostel on Hong Kong Island.

393. In the longer term, we have tentative plans for two further hostels with a combined capacity of 570 places. Together, these additions should suffice to rehouse bedspace apartment lodgers displaced as a result of the licensing scheme.

Street sleepers

394. As explained in paragraph 212 of the previous report, there are persons in Hong Kong who, for various reasons, have either fallen through the social safety nets or, as a matter of choice, have ended up living on the streets. As previously explained, this is not a matter of necessity. The Government and voluntary organizations provide shelter and hostel services for street sleepers. The "Street Sleepers Registry" of the Social Welfare Department indicates that the number has remained steady at around 1,000 to 1,100 over the past three years, though NGOs maintain that the figure is closer to 3,000. We are confident that our figures are correct because the Social Welfare Department regularly and comprehensively verifies the numbers, in situ, on a district-by-district basis. We have not seen any evidence to support a higher figure or that indicates that we have overlooked anyone.

395. Services available to street sleepers remain as described in paragraph 213 of the previous report. Outreach teams do their best for those with more serious difficulties, such as mental illness. NGOs also provide day relief centres, temporary shelters and hostels and outreach services. Between January 1991 and June 1998, permanent accommodation was arranged for over 1,080 street sleepers.

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10/ The improvement process entails agreeing plans with the Licensing Authority; making the physical conversion on the basis of the agreed plans; and inspection/approval by the Authority. During the planning and conversion stages, premises continue to operate under conditional licences that are valid for one year at a time. A full licence is issued when the Authority is satisfied with the conversion works. Those works may proceed in phases to minimize displacement of lodgers.

In 1996, we established a multi-disciplinary team for elderly street sleepers (on a pilot basis) to provide counselling services and health care advice to vulnerable elderly street sleepers.

Private housing

396. The private sector has a crucial role to play in meeting Hong Kong's housing needs, not least because many households earn incomes that are beyond the limits for the various forms of assistance described above. At present, about 50 per cent of Hong Kong's population lives in private housing. By the end of 1997, private housing stock amounted to about 940,000 flats. As indicated in paragraph 346 above in relation to the Long Term Housing Strategy, the Government will facilitate the production of private sector flats. To achieve this, we will provide a steady and sufficient supply of land for private housing development, and streamline and accelerate the relevant approval procedures. We will also encourage private sector involvement in public housing programmes by inviting private developers to build subsidized home ownership flats as part of "mixed developments".

397. Additional measures to help families whose incomes exceed the limit for government assistance, include:

(a) Tax relief for home buyers: introduced in the 1998-1999 financial year; and

(b) Increasing the availability of mortgage finance to home buyers: in March 1997, we established the Hong Kong Mortgage Corporation to provide a discount market for mortgages held by the banks. The aim is to reduce banks' existing exposure to the domestic property sector, thus releasing funds for new loans.

Urban renewal

398. In paragraph 237 of the previous report, we explained that the Land Development Corporation was established by statute (in 1989) to undertake the task of urban renewal. The process of renewal inevitably entails the demolition of older structures, displacing homes and businesses. As previously explained, persons so affected are entitled to compensation.

399. The Corporation offers owners of affected residential properties the market value of their properties. Additionally, owner-occupiers receive a home purchase allowance to enable them to buy newer replacement flats and so to improve their standard of housing. They also receive removal allowances.

400. Tenants are offered the choice of either cash compensation to enable them to relocate, or rehousing in subsidized rental flats. The amounts of cash compensation are at least equal to, and often more generous than, those prescribed by law 11/. The policy is to rehouse all affected tenants who so opt, provided that they do not own domestic property or have alternative accommodation. Such rehousing is provided in subsidized rental flats managed by the Housing Society. The sites for building those flats are granted to the

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11/ Under the Landlord and Tenant (Consolidation) Ordinance (Chapter 7).

Society at concessionary premium. The Land Development Corporation pays the land premium and the cost of constructing the flats.

Commercial premises

401. Owners of shop premises are offered the market value of their shops plus an ex gratia allowance to compensate for business loss. If they consider that insufficient to cover their business loss, they can make separate claims that must be substantiated by proper business records. If the premises were purchased subject to existing tenancies, the tenants are offered an ex gratia allowance that is generally higher than that which may be payable by the Government in resumption/clearance exercises.

402. Disputes about the amount of compensation can be referred to the Lands Tribunal.

Town planning

403. Town planning is central to the process of maintaining and improving the urban living environment. As such, it is a matter of concern to both the community and the Government. The planning process is governed by the Town Planning Ordinance (Chapter 131) which was enacted in 1939. Some commentators consider that aspects of the system are time-consuming and make insufficient provision for public consultation and involvement. The Government has comprehensively reviewed the Ordinance and consulted the public on its proposals in the form of a white bill. We aim to introduce a completely new bill in early-1999 that will make the town planning system - as prescribed in a radically updated Town Planning Ordinance - more open, accountable and efficient.

New towns

404. In paragraphs 243 to 246 of the previous report, we explained that new town development began in the mid-1960s to relieve the pressures on the central urban areas by providing new homes and jobs in the New Territories. At that time (1995), we were carrying out planning and development work with the aim of accommodating a further 300,000 people - bringing the total New Territories population to 2.9 million people - by the year 2000. As at 30 June 1998, the figure had risen to 3.2 million, considerably in excess of the target.

405. As previously explained, unforeseen demographic changes - and unforeseen changes in the structure of Hong Kong's economy - had left some of the new towns temporarily short of school places and had given rise to severe traffic congestion. These were among the issues examined in the course of the Territorial Development Strategy Review discussed in paragraphs 406 and 407 below.

Territorial Development Strategy Review

406. We conducted this review between 1991 and 1998 with a view to formulating an integrated development framework up to 2011 12/. The framework's main objective is to provide adequate land for Hong Kong's long-term development -

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12/ This was formerly known as the "Metroplan"; see paragraph 247 of the previous report.

particularly for housing and transport infrastructure - and to create a better living and working environment for all. During the review, we identified strategic growth areas that will provide a broad mix of housing types with adequate infrastructure and community facilities.

407. In 1993, we consulted the public on the broad goals and initial development options. In 1996, we consulted them on the recommended strategies and programmes. The assumptions, scenarios and proposals that we had put forward for consideration were modified and refined in the light of public comment. In 1998, we published the final executive report setting out the recommended strategies. On that basis, we have initiated discrete studies to ascertain the planning and engineering feasibility of developing the identified strategic growth areas.

Protection of the Harbour Ordinance 1997

408. Hong Kong's central harbour is of outstanding natural beauty and a major attraction to visitors. To protect and preserve it, the former Legislative Council passed a Member's "Bill on the Protection of the Harbour" in June 1997. The Ordinance establishes a principle of presumption against reclamation within the central harbour. It requires all public officers or bodies to have regard to this principle in the exercise of their powers.

409. But land is a scarce resource in Hong Kong and - when geotechnic and other constraints (such as existing developments) have been taken into account - reclamation is sometimes the only viable option. The Government does not lightly take the decision to reclaim. Before deciding whether or not to proceed with a reclamation project, it carefully weighs the public benefit of proceeding against the need to preserve the central harbour. Any proposal for reclamation must pass through an open and transparent planning process. And careful studies must be made of the planning, environmental, hydrological, marine traffic and other impacts before a project is authorized.

The "Small House Policy"

410. As explained in paragraphs 252 to 254 of the previous report, this policy was introduced in the early-1970s to address problems concerning the standard of rural housing and genuine concerns of the New Territories indigenous community that increasing urbanization would lead to their village lifestyle being swamped or marginalized. Since then, it has enabled male indigenous villagers to build houses - once in their life time - on either their own land or on government land.

411. Commentators have maintained that the policy is discriminatory because female indigenous villagers have not benefited from it. To address their concerns, a review committee is examining the policy and expects to complete its task in early-1999. The outcome will form the basis of consultations with interested parties and perhaps the wider public before a decision is made on the future of the policy.

## Article 12
## The right to health

412. At the constitutional level, article 138 of the Basic Law provides that the Government of the HKSAR shall, on its own, formulate policies to develop Western and traditional Chinese medicine and to improve medical and health services. Community organizations and individuals may provide various medical and health services in accordance with law.

### Policy

413. As explained in paragraph 255 of the previous report, the Government's policy is that no one should be prevented, through lack of means, from obtaining adequate medical treatment. To meet this commitment, it heavily subsidizes various healthcare services. In 1996-1997, the net amount so spent was $59 billion (5.0% of Hong Kong's GDP: 2.1% from public funds and 2.9% in the form of private expenditure). Some 69 per cent of the Department of Health's budget is spent on primary health care (which includes disease prevention, health promotion, curative care and rehabilitation). In 1997-1998, public expenditure on health care comprised 14.7 per cent of all recurrent public expenditure and it had risen from $3,130 per capita in 1993-1994 to $4,350.

414. Hong Kong's health indices continue to compare favourably with those of developed nations:

| | Infant mortality rate (per 1,000 live births) | Maternal mortality rate (per 100,000 total births) | Life expectancy | |
|---|---|---|---|---|
| | | | Male | Female |
| Hong Kong (1997) | 4 | 1.6 | 76.8 | 82.2 |
| USA | 7.2 (1996) | 8.3 (1994) | 73 (1996) | 79 (1996) |
| UK | 6.1 (1996) | 6.7 (1992) | 74 (1995) | 79.4 (1995) |
| Japan | 3.8 (1996) | 6.1 (1994) | 77 (1996) | 83.6 (1996) |

The Government continues regularly to submit information on Hong Kong's health situation for publication in the World Health Organization's "Country Health Information Profile".

### General health of Hong Kong's population

415. The infant mortality rate fell from 11.8 per thousand live births in 1980 (4.8 in 1994) to 4.0 in 1996 (from 12.8 to 4.3 for males and from 10.7 to 3.6 for females). Life expectancy for males increased from 71.6 years in 1991 (75.8 in 1994) to 76.3 in 1996. And, for females it increased from 77.9 years in 1991 (81.2 in 1994) to 81.8 years in 1996. Thus, Hong Kong's life expectancy levels remain amongst the highest in the world. The differences in life expectancy levels between males and females are similar to those elsewhere. In 1996, the maternal mortality rate remained low at 3.1 per hundred thousand total

births (all occurred after childbirth) 1/. The whole population has access to safe drinking water and adequate sewage disposal facilities. It also has access to trained personnel for the treatment of common diseases and injuries, for the care for women during pregnancy and delivery, and for child care. In 1997, over 99 per cent of newborns were immunized against tuberculosis (98 per cent in 1994). By the age of one, over 88 per cent of children were immunized against poliomyelitis, diphtheria, pertussis and tetanus (82 per cent in 1994) and over 82 per cent against measles, mumps and rubella (79 per cent in 1994). These levels were similar to those in developed countries.

Control of communicable diseases

416. As explained in paragraph 259 of the previous report, the major communicable diseases are largely under control, though viral hepatitis and tuberculosis remain endemic. The number of hepatitis B carriers - at around 8 per cent to 10 per cent of the population - remains one of the world's highest. However, the immunization programmes, improvements in general hygiene and sanitation, together with safe food and water supplies, have done much to reduce the instance of serious outbreaks 2/. The Government's disease surveillance system requires all medical practitioners to report occurrences of notifiable diseases to the Department of Health, which will act promptly to contain any risk of wider infection. The Department works closely with WHO to monitor and exchange information about newly emerging diseases, such as the recent outbreak of "avian flu" discussed in paragraphs 424 to 429 below.

417. Recent and ongoing initiatives include:

(a) The special measles vaccination campaign of 1997: some 1.1 million people were immunized to prevent a predicted epidemic. It was expected that, in the absence of this programme, the number of cases would have exceeded the 3,000 recorded in 1988. In the event, as explained in footnote 2/ below, there were only 379 cases of measles in 1997 and 1998; and

(b) A new public health laboratory: construction work has started. When it is operational, the laboratory will improve the Government's ability to prevent and control infectious diseases.

Prevention and control of HIV/AIDS

418. As explained in paragraphs 260 to 265 of the previous report, the prevention, care and control of HIV/AIDS is a matter of high priority. As at 31 December 1997, 957 cases of HIV infection - mostly contracted through sexual transmission - had been reported to the Department of Health 3/. Of these, 309 had developed AIDS.

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1/ In paragraph 258 of the previous report, we stated that the rate was 0.11 per thousand, or 11 per 100,000. The apparent improvement is the product of very low numbers: there were two such deaths in 1996 and one in 1997.

2/ For example, the measles epidemic of 1988 affected more than 3,000 people. In 1997, there were just 316 cases. In 1998, there were 63.

3/ But it is estimated that between 1,500 and 2,000 persons have been infected with the virus since the beginning of the epidemic in 1983.

419. The main priorities of Hong Kong's AIDS programme are HIV prevention and health promotion; care for those infected; and development of a non-discriminatory policy.

Advisory Council on AIDS

420. In 1990, the Government established the Council to coordinate activities organized by the Government and by community organizations. In 1994, the Council published its first policy document "Strategies for AIDS prevention, care and control in Hong Kong". In 1996, it organized Hong Kong's first conference on AIDS, which helped to galvanize both the community's response to AIDS and networking with people from Macau and the mainland. In 1998, the Council is working on a comprehensive review of Hong Kong's overall programme. Recommendations for forward development will be made by external consultants.

Detection and treatment

421. The Department of Health's AIDS Unit is the main operational arm of the Government's AIDS services. The Unit runs an anonymous and confidential HIV testing service and an interactive computerized hotline for the public. The hotline receives about 7,000 calls a month. Both the Unit and the Hospital Authority 4/ provide public clinical services to HIV/AIDS patients. Combination antiretroviral therapy is the standard treatment. In early-1999, the Department of Health will open an integrated day treatment centre for HIV and sexually transmitted diseases.

The rights of sufferers

422. The rights of people living with HIV/AIDS are promoted and protected through:

(a) The policy guidelines established by the Advisory Council on AIDS;

(b) The Community Charter on AIDS that encourages non-discrimination in the workplace; and

(c) The Disability Discrimination Ordinance.

Community involvement and education

423. In paragraph 260 of the previous report, we explained that (in 1993) the Government had established an AIDS Trust Fund to encourage and finance community-based education and support service projects. The fund also makes ex gratia payments to HIV-infected haemophiliacs. In 1997, with a grant from the Fund, the Department of Health opened the "Red Ribbon Centre" for AIDS resources, research and education. The Department's AIDS Unit operates the Centre.

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4/ The Hospital Authority is responsible for the management of all public hospitals in Hong Kong.

Avian flu

424. In May 1997, a child who had developed symptoms similar to those caused by influenza viruses - sudden high fever, malaise, cough and sore throat - was taken to hospital and died within 10 days. A tracheal aspirate sample was taken for virus culture and typing. With the assistance of the Centers for Disease Control and Prevention (CDC) in Atlanta, United States of America, it was confirmed that the child was infected by Influenza A H5N1. This was a virus that had previously been known to infect only birds, hence the name "bird flu" or "avian flu".

425. Influenza surveillance was immediately intensified. And the Department of Health worked closely with CDC and WHO to identify the source of infection and mode of transmission.

426. In late-December 1997, it was confirmed that a large number of chickens in a local farm and a local wholesale market had been infected by the virus. To prevent further spread of the virus and to protect public health, the decision was made to slaughter all chickens in local farms and all poultry at the wholesale markets and retail outlets. This was carried out between 29 and 31 December and was followed by a thorough cleansing operation of all farms, wholesale and retail markets.

427. Joint research by the Department of Health, WHO and the University of Hong Kong revealed that ducks, geese and other water fowl were intermittent carriers of the virus and - though they did not develop the disease - could infect chickens and other non-web-footed birds. The Government has therefore instituted a policy of segregating live chickens from all live web-footed birds at every stage of the marketing process: from farms, to transportation, to trading and to slaughter. All carcasses of ducks and geese must now be transported to retail outlets in chilled, hygienic conditions.

428. In the course of the outbreak, a total of 18 people were treated for the virus, of whom six died. Twelve recovered and were discharged from hospital. No new cases have occurred since December 1997.

What has been learned: the way forward

429. The indications are that transmission is almost exclusively from bird to human. Human to human transmission is possible but inefficient. Hospitals and clinics remain vigilent for signs of recurrence. The Government, WHO and CDC continue jointly to monitor the evolution of the virus and to analyse the test results obtained in Hong Kong.

Provision of services and facilities for disabled persons

430. In paragraph 266 of the previous report, we indicated that the 1995 White Paper on Rehabilitation had set new targets to meet the changing needs and circumstances of the various client groups and that the Government expected to meet the revised targets by 1997 5/. That achieved, there would be 3,676 day

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5/ The target date set in the 1995 White Paper was, in fact, 1998-1999, not 1997. The previous report was mistaken in this respect (a typographical error).

activity centre places (1,408 new ones), 7,542 residential places (3,930 new ones), and 6,495 sheltered workshop places (2,160 new ones).

431. At the end of 1997, there were 3,606 day activity centre places, 7,362 residential places and 7,225 sheltered workshop places 6/. By the end of 1998, there will be an additional 50 day activity centre places and 40 additional residential places. A further 50 day activity centre places, 190 residential places and 240 sheltered workshop places have been planned for 1999-2000. To meet increasing demand, funds have been earmarked for over 3,000 additional residential and day service places in the next few years.

Specific measures to protect pre-school disabled children

432. Children with disabilities have access to pre-school services from birth to the age of six. Those services are provided in early education and training centres (1,435 places), special child care centres (1,179 places) and integrated programmes in ordinary child care centres (1,222 places) 7/. The special training programmes provided 126 places for autistic children. An additional 288 places for various pre-school services will be provided in 1998-1999 and a further 300 before 2003.

The Disability Discrimination Ordinance and its implementation

433. This subject is discussed in paragraphs 8 to 11 above in relation to article 2.

Provision of services and facilities for the mentally disabled

Specific services and facilities

434. The Hospital Authority provides psychiatric treatment through in-patient services, out-patient clinics and day hospitals. It also offers community care and outreach services to help discharged mental patients reintegrate into the community. As at 31 March 1998, there were 4,966 psychiatric hospital beds, 575 day hospital places, 18 psychiatric clinics, 12 community psychiatric nursing centres, eight psychogeriatric teams, and five community psychiatric teams. An additional 120 psychiatric hospital beds will be opened in 1998-1999. The Social Welfare Department and subvented NGOs provide residential and day services to discharged mental patients. As at 30 June 1998, there were 1,177 halfway house places for them: 570 places in long stay care homes (where chronic mental patients could receive the nursing care they needed), and 180 activity centre places to foster the process of social adjustment. Funds have been earmarked for about 1,000 additional residential places in the next few years to meet increased demand. Other services include sheltered workshops, supported employment, after-care services (to look after persons discharged from halfway houses), counselling and compassionate rehousing.

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6/ These included 1,010 places for sheltered workers with the potential (given proper training and preparation) to enter open employment. This arrangement is known as the "supported employment scheme".

7/ As at 30 June 1998.

The severely mentally disabled

435. As at 31 March 1998, institutions operated by the Hospital Authority provided 800 infirmary beds for such persons. About 80 more were awaiting hospital admission. Additional hospital accommodation is being planned. The Social Welfare Department and subvented NGOs also provided 2,533 residential places for this group and 3,426 day places in activity centres.

The moderately mentally disabled

436. The Social Welfare Department and NGOs provide residential places for this group. As at 31 March 1998, there were 1,444 such places.

Use of Electro-convulsive treatment

437. At the hearing of the United Kingdom's report on Hong Kong under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (November 1995), the Committee against Torture asked whether Hong Kong hospitals made use of Electro-convulsive treatment (ECT) and if so, subject to what constraints. The Committee may wish to be aware of our response.

438. Like medical institutions elsewhere, public hospitals in Hong Kong use ECT for patients with severe depressive illness, mania or schizophrenia. ECT is considered a safe and effective treatment for patients with strong suicidal tendencies and for those who do not respond well to drug therapy. There are clear guidelines governing the application of ECT to patients. The major indication for use of ECT is in cases of severe depressive illness. To a lesser extent it is also indicated for patients with mania or schizophrenia, especially as an adjunct to neuroleptic treatment when response to medication has not been satisfactory.

439. ECT is carried out in public hospitals by qualified and properly trained health care professionals, including psychiatrists, anaesthetists and nurses. This technique is applied in accordance with guidelines endorsed by the Quality Assurance Sub-Committee of the Co-ordinating Committee (Psychiatry) of the Hospital Authority. These guidelines are in keeping with international standards.

440. ECT is only administered with the patient's consent or on the basis of a second medical opinion. Where patients are not mentally fit to consent to treatment on their own behalf, such consent must be obtained from their relatives or guardians and a second expert opinion must be sought to justify the use of the treatment. Physical fitness is carefully assessed before treatment is administered by a specially trained team of anaesthetists, psychiatrists and nurses. The procedure is closely supervised and the patient's response is carefully monitored. ECT is part of an individualized treatment plan that is regularly reviewed by the clinical team responsible for the patient concerned.

441. In recent years, the pattern of application has been:

| | 1995-1996 | 1996-1997 | 1997-1998 |
|---|---|---|---|
| Number of patients receiving ECT | 226 | 191 | 180 |
| Number of treatments | 1,279 | 1,081 | 1,080 |
| Average number of treatments per patient | 5.65 | 5.66 | 6 |

Different forms of specific health/medical care

Primary health care

442. As explained in paragraphs 272 and 273 of the previous report, the Government follows the WHO approach to the provision of primary health care. Services in this area comprise health education, family planning, maternal and child health, immunizations and the treatment and control of diseases. These are delivered through a network of clinics and health centres operated by the Department of Health. Primary medical care (medical consultation and dispensing services) is provided in 63 general out-patient clinics throughout the territory. Other health care services include child assessment, immunization of school children, student health service, occupational health services and elderly health services.

443. In 1997, there were some 5.4 million attendances at government general out-patient clinics. There is one clinic for approximately 100,000 people. The situation is closely monitored to ensure that the needs of the population are met.

Family health and health care of women of child-bearing age and children up to five years of age

444. The Government's Family Health Service (FHS) provides a comprehensive range of family health, maternal health and child health services through its 50 maternal and child health centres. Those services include family planning and cervical cytology screening. Antenatal and postnatal services are provided to all mothers before and after delivery. The FHS Comprehensive Observation Service detects developmental abnormalities of children at an early stage to facilitate early remedial treatment. It performs developmental screening tests for children at various key ages and refers those with suspected abnormalities to specialist clinics and child assessment centres for follow-up treatment.

445. The six multi-disciplinary child assessment centres serve children from birth to 11 years. They provide comprehensive physical, psychological and social assessment. They also provide treatment and parental counselling. Where necessary, they refer children for placement in government and voluntary institutions.

"Woman Health Centres"

446. As foreshadowed in paragraph 277 of the previous report, there are now three such centres providing health counselling and disease prevention to women aged 45 to 64. Services include individual health counselling, group health talks on healthy living and cancer prevention, and screening services such as gynaecological checks and pap smears.

Student health

447. In 1995, the Government introduced the Student Health Service to serve primary and secondary school students. The services are provided through 11 dedicated centres and include physical examination, health screening, individual counselling and health education. Students found to have health problems are referred to the appropriate specialists.

Infirmary beds

448. Infirmary beds serve elderly and disabled patients in need of long-term care. With an ageing population, the demand for infirmary beds is high and is likely to remain so. With that in mind, the Hospital Authority plans to increase the number of beds from the present 2,000-plus to more than 3,000 by 2003-2004; an increase of about 50 per cent.

Dental care

449. As explained in paragraphs 283 and 284 of the previous report, curative dental health services are largely provided by the private sector. Government services are confined to emergency treatment, specialist treatment for patients in public hospitals, and dental care for prisoners. In 1993, the Department of Health initiated a pilot scheme to provide curative dental care to patients with special needs. These included mentally and physically handicapped persons, patients with congenital deformities and patients who had undergone maxillo-facial operations. After evaluation in 1994, the pilot scheme - which was conducted in a public hospital - was deemed successful. The service is now provided in four public hospitals.

450. To ensure the supply of trained dental personnel, the Government subvents Hong Kong's single dental school and training school for dental therapists. It also promotes public awareness of oral health and hygiene. Efforts in this respect are strongly focused on primary school children, who receive regular dental examinations, simple dental treatment and oral health education through the School Dental Care Service. In 1997, 390,645 children - about 83 per cent of the primary school population - participated in the service. The pilot scheme for secondary schools (referred to in paragraph 284 of the previous report) was discontinued. The scheme was initiated and "owned" by the Hong Kong Dental Association. Its discontinuation was a decision of the Association.

Health education

451. As explained in paragraphs 285 and 286 of the previous report, the Central Health Education Unit of the Department of Health plans, organizes, coordinates and promotes health education activities. Its efforts focus on encouraging healthy living. Its work is complemented by that of the Department's Oral Health Education Unit.

Provision of hospital services

452. As explained in paragraph 287 of the previous report, the Hospital Authority manages all public hospitals: more than 90 per cent of Hong Kong's hospital services in terms of the number of patient bed days. Under its statute, the Authority's functions are to advise the Government of the public's needs for hospital services and the resources required to meet them. It is also required

to manage and develop hospital services in a way conducive to achieving greater efficiency, more public participation, and better patient care. At the end of March 1998, there were 8,244 medical doctors and 31,593 hospital beds (both private and public), respectively 7.5 per cent and 13.5 per cent more than the 1994 figures reported previously.

453. To optimize the use of available resources, public hospitals have been grouped into eight clusters, each providing - within its geographical area - a comprehensive range of health care services in a continuum, with integration of acute, extended, ambulatory and community care.

Demand and supply of hospital beds

454. The demand for public hospital services has continued to increase. In 1997-1998, the number of patient discharges and deaths totalled 970,000, 45 per cent more than in 1991-1992 when the Hospital Authority first took over the management of public hospitals. As at 31 March 1998, the Authority provided 26,790 hospital beds or 4.0 beds per thousand. The Authority's target for 31 March 2002 is 30,030 beds or 4.3 beds per thousand.

455. In 1997, the Authority reviewed demand for hospital beds and concluded that - assuming there was no immediate change to the macro-health care environment - it would need 3,000 more beds by 2006. The Government's long-term development programme will address this need.

Cost recovery

456. Charges for public health care are set at levels that should be affordable to most members of the public. The Government recovers about 4 per cent of the cost of in-patient services and about 10 per cent of the cost of specialist out-patient services. Accident and emergency services are free of charge. A review of the health care financing system is in progress. We expect to complete this by the end of 1998.

Services for the chronically ill

457. As explained in paragraph 293 of the previous report, the Hospital Authority provides acute, extended, ambulatory and community care services for the chronically ill. Development of the Authority's rehabilitation and "shared care" programmes continues for the benefit of patients with such illnesses as chronic pulmonary diseases, cerebrovascular disease and diabetes mellitus. We previously reported that eight "patient resources centres" provided support to chronically ill patients and their families. There are now 30 such centres.

Hospital manpower requirements

458. The shortages described in paragraph 292 of the previous report continue as the number of beds increases and services are improved, expanded, or developed. As at 30 June 1998, there were 8,244 registered doctors, a ratio of 1.24 per thousand. And there were 38,801 registered nurses, a ratio of 5.83 per thousand. In the public sector, the Hospital Authority estimates that it will need an additional 130 doctors, 500 nurses and 160 allied health staff each year to commission new and improved facilities and programmes. To meet these requirements, the Authority will intensify recruitment, redesign work processes

and improve support programmes to enable clinicians to focus on direct patient care.

459. To maintain high standards of health care, the Authority will continue to provide professional training and development opportunities for medical, nursing and allied health staff in the form of on-the-job programmes, conferences, seminars, workshops and courses organized internally or by external institutions. It will also continue its collaboration with local tertiary institutions to ensure that the number of graduates suffices to meet demand.

Deaths and injuries in hospital

460. On several occasions during the period under review, patients have died or been injured in the course of medical treatment, inter alia through the incorrect administration of medical gases due to mislabelling or injection of excessive dosages. These occurrences have caused very great concern, both to the Government and the public.

461. Each such occurrence has been the subject of immediate and exhaustive investigation: by the Hospital Authority in the case of public hospitals and by the Department of Health in the case of private ones 8/. The investigations have discovered that not all cases where negligence or incompetence has been alleged have in fact entailed them. Often, the problems have arisen from the inherent risks involved in some forms of clinical treatment, complications arising in the course of treatment, the difficulty of diagnosis where the symptoms of severe illnesses "mimic" those of more common maladies, and the fact that there are often limits to what treatment can achieve given the current state of the art.

462. However, in some cases it was clear that death or injury was the result of other causes. These included:

Instrument or mechanical failure: such as the fracture of artificial heart valves due to faults in the manufacturing process; or the failure of essential life-maintaining equipment;

Organizational failure: where confusion has arisen in the administration of care and services, particularly in complex situations; and

Human error: arising from lapses of concentration, carelessness, miscommunication, or lack of knowledge.

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8/ One of the more serious incidents - the failure of a kidney dialysis procedure - occurred in a private hospital some months after the closing date of this report but while drafting was still in progress. In accordance with established procedure, the hospital concerned was required to conduct a thorough investigation and to submit a detailed report to the Department of Health. The Department will examine the findings carefully and, inter alia, will determine with the hospital's management what measures must be taken to prevent reoccurrences. The Department will then assess the wider implications of the incident, identify scope for improvement, and issue guidelines to other private hospitals as appropriate.

463. On the basis of recommendations made by a special committee, the Authority has tightened:

Clinical supervision (monitoring of professional competence "on the job");

Clinical audit procedures and quality assurance systems (the formal mechanisms/systems for ensuring the maintenance of high standards of performance);

Risk management procedures (initiatives in this area include a new "Medication Incident Reporting System" and the development of an automated dosing and drug labelling system); and

Complaint management systems (to ensure that all complaints by patients and their relatives are promptly and effectively investigated).

464. Given human frailty and the limits of science and technology, we cannot realistically expect that errors will not occur again. But both the Government and the Hospital Authority are acutely aware of the importance of learning from past experience and mistakes. They are - and will continue - making every effort to strengthen system safeguards and risk management processes in order to minimize the likelihood of recurrences and to reduce clinical risk.

Traditional Chinese medicine

465. For some years there has been concern within the community that the controls exercised over the standards of Chinese medicine and the qualifications of some of its practitioners are inadequate. To address those concerns, the Government established the Preparatory Committee on Chinese Medicine to advise on the promotion, development and regulation of traditional Chinese medicine. The Committee completed its work and submitted its report to the Government in March 1997. On the basis of its recommendations, the Government plans to introduce legislation to regulate the practice, use and trading of traditional Chinese medicines in order to safeguard public health and to give its practitioners a statutory professional status. The aim is to introduce the new legislation in 1998-1999 and to give effect to its provisions from 2000.

International cooperation

466. As explained in paragraph 294 of the previous report, Hong Kong maintains close cooperation with WHO, the International Planned Parenthood Federation (IPPF), the United Nations Children's Fund (UNICEF) and the World Bank. We draw on the experience of other countries to formulate policies and programmes suited to local circumstances.

Environmental and industrial hygiene

Environmental protection strategy

467. In paragraph 295 of the previous report, we explained that the 1989 White Paper, "Pollution in Hong Kong - a time to act", had initiated a 10-year environmental protection strategy for achieving certain environmental aims by specific target dates. The strategy included a comprehensive legislative framework for controlling pollution. A final review of the strategy was carried out in 1997 and the results published in May 1998. In 1997, the Government

initiated a study of "Sustainable development for the 21st century". The aim is to establish, through public consultation and review, a planning tool that will integrate social, economic and environmental indicators. The objectives are to provide a framework for the review of policies and programmes and to plan for the future in a way that reconciles social and economic aspirations with the need to sustain a healthy environment for Hong Kong and for our neighbours.

Control of water pollution

468. In paragraph 296 of the previous report, we explained that in 1990 the Government amended the Water Pollution Control Ordinance (Chapter 358) to tighten controls over discharges and deposits within specified water control zones. At the time of preparation of the previous report, controls were in place in nine zones. Now, controls are in force throughout the territory. Marine dumping activities are controlled under the Dumping at Sea Ordinance (Chapter 466) through a permit system for the disposal of substances and articles in specific areas.

469. The comprehensive sewage strategy adopted in 1989 provides for stronger legislative control of effluent disposal; improved local sewage collection and treatment through 16 regional sewerage master plans; and a four-stage "Strategic Sewage Disposal Scheme". The aim of the latter was (and remains) to process urban sewage in a central treatment plant before disposal via an oceanic outfall. Detailed design or construction works for all 16 master plans are under way. Further treatment facilities are being planned to cope with the expanding population. Construction work on the first stage of the "Disposal Scheme" started in April 1994 and the centralized sewage treatment works was commissioned in 1997. The related tunnel collection system is expected to be completed in 2000. The environmental impact assessment for the second stage is in progress. So too are the feasibility studies for the third and fourth stages.

Water quality at beaches

470. In paragraph 297 of the previous report, we explained that notwithstanding the steps being taken to control water pollution, significant problems remained. The situation has somewhat improved in 1998. Nine out of the territory's 41 gazetted beaches 9/ failed to meet the statutory water quality objectives for bathing beaches as compared with 15 in 1997. Among the five beaches closed to the public only one had "very poor" water quality in 1998. The problem is caused primarily by high background pollution. However, the progressive provision of local sewerage treatment will continue to bring about environmental improvements in the early 2000s.

Water quality in rivers

471. The improvements mentioned in paragraph 298 of the previous report have steadily continued. But some of Hong Kong's rivers remain severely polluted. Livestock waste remains a major contributor. Controls extended to the whole

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9/ Since the submission of the previous report (which stated that there were 41 gazetted beaches), two beaches have been degazetted and one gazetted.

territory in 1997 10/ have helped to reduce the amount of pollution by livestock waste. Even so water quality objectives still cannot be met. We will review the position to establish what further improvements can be made.

Water quality in marine waters

472. In paragraph 299 of the previous report, we said that marine water quality was generally acceptable except in Tolo Harbour, Victoria Harbour and Deep Bay. The position in Tolo Harbour has improved. But the other two areas remain unacceptable. In Victoria Harbour the very poor water quality is due to largely untreated commercial, industrial and domestic sewage. The conditions should improve greatly upon completion of the sewerage schemes explained in paragraph 469 above. In Deep Bay the problem is due largely to livestock waste and domestic sewage from both Hong Kong and the Shenzhen Special Economic Zone in Guangdong Province. Again, the progressive implementation of the new sewerage projects and controls of livestock waste should improve the situation provided similar action is also taken in the Shenzhen Special Economic Zone (Guangdong Province), which borders the SAR in the north. This is one of the key objectives of the Hong Kong Guangdong Environmental Protection Liaison Group.

Disposal of solid wastes

473. In paragraph 300 of the previous report we explained that the 1989 Waste Disposal Plan proposed replacing existing urban landfills and incinerators with three new state-of-the-art landfills in the New Territories, serviced by a network of refuse transfer stations. At that time (1995), three transfer stations were in operation. Now there are seven. More are in the planning or construction stage. The new landfills have long been operational. We are now reviewing the Waste Disposal Plan with a view to updating it.

Disposal of special wastes

474. As explained in paragraph 301 of the previous report, these include chemical, abattoir and medical wastes. Chemical wastes are treated at the Chemical Waste Treatment Centre commissioned in 1993 and their production, transport and disposal remains under strict legal control 11/. We previously reported that the Government was planning to build an incinerator for medical waste and for animal carcasses. Now, the intention is to use separate incinerators for each of those purposes.

Waste reduction

475. In 1997, we consulted the public on the findings of a study into means to avoid waste, to increase reuse and recycling, and to reduce the final volume of municipal waste in an environmentally acceptable way. The resulting Waste Reduction Framework Plan was launched in 1998. The objective is to double the level of material diverted from the waste stream to reuse or recycling from the present 30 per cent, and to reduce the overall level of waste production.

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10/ Under the Waste Disposal Ordinance (Chapter 354) and the Waste Disposal (Livestock Waste) Regulations (Chapter 354 sub-legislation A).

11/ Again, by regulations under the Waste Disposal Ordinance.

Control of air pollution

476. In paragraph 303 of the previous report, we explained that the Government continuously monitored air quality at nine sites throughout Hong Kong. Now, there are 12 such sites. As previously reported, air quality in many parts of Hong Kong is reasonably good on a day-to-day basis. But, the chronic presence of respirable particulate matter in the more congested urban districts continues consistently to exceed annual acceptable levels. This poses a threat to the health and well-being of the community and reduces visibility. The main sources of air pollution in Hong Kong are road vehicles, construction activities and industry.

477. Legal measures for the control of air pollution remain as previously reported. The major instrument for such control is the Air Pollution Control Ordinance (Chapter 311). Ozone depleting substances are controlled under the Ozone Layer Protection Ordinance (Chapter 403) 12/. Hong Kong is, as before, divided by statute into 10 Air Control Zones. The Air Pollution Control (Fuel Restriction) Regulations (sub-legislation under Chapter 311) sets the maximum permitted level of sulphur in industrial fuel oils at 0.5 per cent.

Vehicle emissions and fuel standards

478. Good progress has been made since we submitted the previous report. The standards imposed in 1995 (paragraph 305 of the previous report) have brought Hong Kong's standards into line with those of the European Union. And, in April 1998, we introduced emission standards for new diesel private cars comparable to those in California. We will continue to tighten emission and fuel standards in accordance with international trends.

479. As explained in paragraph 306 of the previous report, diesel vehicles are a major source of air pollution in Hong Kong because of their intensive use for mainly commercial reasons. The Government has been seeking clean alternatives to such vehicles. Liquefied petroleum gas (LPG) has been identified as a clean and practicable alternative to motor diesel fuel. In November 1997, we initiated a one year trial of LPG-powered taxis to assess the operation of such vehicles in the local driving environment. Although the trial still has a few months to run, it has already found LPG taxis a practicable alternative to diesel. We are now working on a proposal to introduce LPG taxis on a large scale.

480. But diesel vehicles are not the only source of vehicle emissions. The Government's strategy is to:

(a) Adopt stringent vehicle emissions and fuel standards;

(b) Strengthen emission inspection;

(c) Strengthen enforcement against smoky vehicles; and

(d) Educate the public.

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12/ This implements the requirements of the Montreal Protocol. The latter seeks to control production, trading, and hence the supply of ozone depleting substances; and to phase out the use of these substances eventually as a means of eliminating their release into the atmosphere.

Control of other air pollution sources

481. The Air Pollution Control Ordinance imposes stringent controls over environmental asbestos and all air polluting processes. As foreshadowed in paragraph 311 of the previous report, the licensing exemptions previously enjoyed by certain polluting industries are being removed in phases. The de-exemption exercise is ongoing. Our target remains to remove all exemptions by the year 2000.

482. The controls over premises where asbestos containing materials are suspected to be present remain as described in paragraph 310 of the previous report (owners to engage consultants to prepare an asbestos investigation report for submission to the Environmental Protection Department; owners to submit an "asbestos abatement plan" if such materials are discovered; consultants, work supervisors, laboratories and contractors involved in the use or handling of asbestos-containing materials to be registered). The import and sale of amosite and crocidolite were banned in May 1996.

483. In paragraph 311 of the previous report, we explained that 31 industrial processes with the potential to adversely affect the environment 13/ were subject to licensing controls under the Air Pollution Control Ordinance and were required to adopt the best practicable means to prevent emission of air pollutants. The controls were being implemented in phases with some existing plants being exempted to give the owner time to comply with the emission requirements. That process is continuing and we aim to extend the controls to all affected premises by the year 2000.

484. The Air Pollution Control (Open Burning) Regulation 14/, introduced in 1996, prohibits open burning of construction wastes, tyres and cables for metal salvage. It also prescribes strict controls over other open burning activities. And the Air Pollution Control (Construction Dust) Regulation 14/ 1997 requires works contractors to adopt measures to minimize dust emissions from construction activities.

New regulation

485. To reduce the exposure of the public to air toxics, we shall introduce two set of regulations in 1999 to control benzene emissions from petrol filling stations and perchloroethylene emissions from dry cleaning operations.

486. Benzene is a human carcinogen. Unloading of petrol in petrol filling stations is one of the major sources that people are exposed to due to the proximity of the stations to the residential premises. The regulation requires that all petrol delivery vehicles and petrol filling stations to be equipped with vapour recovery system to minimize the benzene emissions. Similarly, perchloroethylene is a toxic air pollutant which may cause liver problems, miscarriages, and probably cancer. The regulation requires that all dry-cleaning machines have to be of the non-vented type meeting stringent specified

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13/ These include such industries as incineration, aluminium works, petrochemical processing and gas production.

14/ Sub-legislation under Chapter 311.

standards. The two regulations will bring Hong Kong into line with the practices of many other developed countries.

Indoor air pollution

487. The 18-month consultancy study foreshadowed in paragraph 312 of the previous report has been completed. The Government will consult the public on its findings and on a draft code of practice to improve indoor air quality, particularly in public indoor areas and offices.

Control of noise pollution

488. In paragraph 313 of the previous report, we described the measures then in place. We also explained that the Government intended introducing new subsidiary legislation 15/ to impose further and tighter controls over construction noise. That was accomplished in 1996. The new controls cover such activities as hammering and rubble disposal. They also tighten noise limits on the use of certain mechanical equipment. Noise from motor vehicles came under statutory control in August 1996 16/. Vehicle intruder alarm systems followed in April 1997 17/. And provisions were introduced - again in 1997 - for the phased abolition of excessively noisy percussive piling machines such as diesel, pneumatic and steam hammers.

Environmental education

489. Paragraph 315 of the previous report referred to the statutory Environment and Conservation Fund that was established in 1994 to support education and research activities undertaken by community groups. In 1998, the Fund's capital was increased from $50 million to $100 million.

490. Both the Education Department and the Environmental Protection Department run extensive education programmes. These are directed principally towards schools. An Environmental Campaign Committee coordinates public education campaigns to inform the community about environmental issues and to encourage the attitudinal and behavioural changes that will help to bring about a healthier living environment. This work provides permanent, systematic environmental education to back up more narrowly targeted campaigns such as the Clean Hong Kong Campaign (annual anti-littering and environmental hygiene programme) and the recently launched campaign: "Health Living for the 21st Century".

Environmental impact assessment

491. In paragraph 316 of the previous report, we described the measures then in place to ensure that the environmental implications of major development proposals were properly assessed. The statutory framework foreshadowed in that paragraph was put into effect in April 1998 with the implementation of the

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15/ Under the Noise Control Ordinance (Chapter 400).

16/ Under the Noise Control Ordinance and the Road Traffic Ordinance (Chapter 374).

17/ Under the Noise Control Ordinance.

Environmental Impact Assessment (EIA) Ordinance (Chapter 499). It is now an offence to construct or operate a designated project or decommission a designated project as defined under the Ordinance without an environmental permit or contrary to the conditions, if any, set out in the permit. Applicants must submit project profiles to the Director of Environmental Protection who will either require them to prepare EIA reports or allow them to apply direct for permits. Project profiles and EIA reports prepared under the Ordinance must be made available for public inspection and comment. Such comments must be taken into account before EIA study briefs are issued and EIA reports approved. To facilitate public inspection, all project profiles, EIA study briefs, approved EIA reports and environmental permits issued are placed in the Environmental Impact Assessment Ordinance Register Office, and placed on the internet during the public inspection period.

Occupational health

492. This is discussed in paragraphs 102 to 111 above in relation to article 7.

The Occupational Safety and Health Service of the Labour Department

493. As explained in paragraph 317 of the previous report, the Occupational Health Service works to maintain and improve employees' physical and mental well-being. It continues to pursue these tasks in the ways previously described. That is, it:

Helps employers manage job-related health hazards by adopting preventive measures and safe practices;

Gives on-site health talks to employers and employees; organizes exhibitions and seminars; and publishes booklets and codes of practice for the prevention of occupational diseases;

Helps to reduce risks to employees by identifying, evaluating and controlling physical, chemical and biological hazards in the work environment; and

Provides medical examinations for persons working with radiation and for government employees who are exposed to occupational hazards such as compressed air, pesticides, asbestos and the use of breathing apparatus.

494. Annex 25 provides the statistics on occupational diseases for the period 1994 to June 1998.

Occupational Health Clinic

495. In paragraph 320 of the previous report, we explained that the Labour Department had opened a pilot occupational health clinic to integrate occupational health services and primary health care. The pilot scheme has proved successful and demand for its services has increased. In anticipation of a further such increase, a second such clinic will be established in 1998-1999. Like the existing one, this will provide such services as investigation of occupational diseases, advice on preventing and controlling occupational hazards, health education, counselling services, and treatment for occupational diseases.

Occupational Safety and Health Service Centre

496. An occupational safety and health service centre will open in early-1999. Its purpose will be to foster awareness of workplace safety and health risks and to provide guidance on compliance with the relevant laws. It will also provide initial medical screening and health advice to workers.

## Article 13
## Right to education

497. article 136 of the Basic Law provides that the HKSAR Government shall, on its own, formulate policies on the development and improvement of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications. Article 137 provides that educational institutions of all kinds may retain their autonomy and enjoy academic freedom; and students shall enjoy the freedom to choose where to pursue their education. Article 144 provides that the HKSAR Government shall maintain the policy previously practized in Hong Kong in respect of subventions for non-governmental organizations in fields including education.

Access to education and educational attainment

Nine-year free and compulsory 1/ education

498. As explained in paragraph 321 of the previous report, we consider that the statutory framework and administrative structure within which education in Hong Kong is conducted are consistent with the provisions of this article. Access to education is not constrained on grounds of race, religion, sex, age or language. Six-year primary education became free in 1971. In 1978, free and compulsory education was extended to the third year of secondary education ("Secondary 3"). The Education Ordinance (Chapter 279) empowers the Director of Education to enforce school attendance if a child is not attending school without reasonable excuse.

Senior secondary, technical and tertiary education

499. Beyond Secondary 3, the Government provides subsidized Secondary 4 and 5 places for 85 per cent of the 15 to 17 age group. These students will normally study for the Hong Kong Certificate of Education. The Government also provides post-Secondary 3 craft courses in technical institutes for another 10 per cent of this age group.

500. Secondary 6 and 7 prepare 17 to 19 year olds for the Hong Kong Advanced Level Examination, which is the matriculation examination for first degree courses. The number of subsidized places at this level is equivalent to one third of the subsidized Secondary 4 and 5 places two years earlier. We also provide craft/technical courses at the post-Secondary 5 level in technical institutes and technical colleges. These cater for about 10 per cent of this age group.

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1/ Please see also footnote 3/ in relation to article 2 on the terms used.

Private schools

501. As explained in paragraphs 366 to 368 of the previous report, private schools are the main providers of pre-school education. At the primary level and above, they offer parents alternative choices to mainstream schooling. Statistics in relation to private schools are provided in annex 26.

502. Private schools must be registered under the Education Ordinance, which is the statutory framework for all schooling in Hong Kong. To be so registered, schools must comply with regulations prescribed in the Ordinance in respect of the suitability and safety of their premises and the suitability of their staff to manage schools or to teach.

503. In 1991, the Government introduced the Direct Subsidy Scheme (DSS). The aim was to provide parents greater freedom of choice by encouraging schools to offer curricular options not available in mainstream schools. Secondary schools admitted to the DSS are paid a government subsidy ranging from 25 per cent to 100 per cent of the unit cost of an aided school place, depending on the amount they charge by way of fees. DSS schools have maximum freedom to set their own curricula, fees and entrance requirements, provided that these are consistent with basic educational standards.

Financial assistance for needy students

504. A fundamental government policy is that no student shall be denied access to education because of a lack of means. There are several publicly-funded schemes that ensure this. These include:

(a) Student travel subsidy: needy students aged between 12 and 24 in full-time study up to first degree level are eligible for a subsidy to cover part of their study-related travel expenses. From 1998-1999, the scheme will be extended to cover full-time students aged 25 or above who have not completed their first degrees; and

(b) Textbook assistance: this is a grant made to needy students attending public sector schools for the purchase of essential textbooks and stationery.

These forms of assistance are available to needy students at all levels. Forms of assistance that are specific to secondary and tertiary students are discussed in paragraphs 511 and 532 below respectively.

Expenditure on education as a percentage of GDP

505. In 1998-1999, expenditure on education totalled HK$ 42 billion, or 3.53 per cent of GDP. The corresponding figures were HK$ 25.365 billion in 1993 (2.99 per cent of GDP) and HK$ 11.266 billion in 1988 (2.81 per cent). About one third of the budget ($14 billion) is spent on tertiary education.

Profile of educational attainment

506. Indicators of educational attainment are provided in annex 27.

Pre-primary education

507. Pre-primary education is not compulsory. But most parents consider such education to be an important preparation for primary schooling and about 76 per cent of children aged three to five attend private kindergartens. The Government considers that pre-primary schooling is essentially a matter of parental choice and does not fully subsidize education at this level. But it is concerned that the services provided should be of a good standard. That is, they should be provided by qualified persons in premises that are fit for the purpose. To ensure this, the Government provides subsidies in the form of rent and rate reimbursements, purpose-built kindergarten premises in public housing estates, remission of fees to needy parents 2/, and grants to enable kindergartens to employ more qualified staff 3/.

Primary and secondary education

Floating classes

508. As explained in paragraphs 381 to 384 of the previous report, Hong Kong secondary schools have been built to a standard design with accommodation for 24 classes. In most schools, the number of classes matches the number of classrooms and each class has a "homebase" where pupils can leave books and equipment. But, for local demographic reasons, some schools may operate more than 24. The extra classes have no "homebase" and must take their lessons in special rooms such as language and science laboratories. Pupils in these classes have to keep books and equipment in lockers. Because the pupils have to move from room to room during the school day, such classes are called "floating classes" and the process is referred to as "flotation". Most Hong Kong educators consider flotation undesirable and we now expect to abolish floating classes in Secondary 1 to 5 by the 2000-2001 school year.

Whole-day primary schooling

509. As explained in paragraph 370 of the previous report, "bisessional" - or "half-day" - schooling is a process whereby two schools share a building: one "school" of pupils using it in the morning, another in the afternoon. This was particularly prevalent in primary schools. Most educators considered that whole-day schooling was educationally better: a view that Government has long shared.

510. Since September 1993, the policy has been that all new primary schools should operate on a whole-day basis. Existing bi-sessional schools have been encouraged to change to whole-day operation, whenever the supply and demand of places in their districts so permit. In 1997, we announced our intention of expediting the rate of change, so that, by the commencement of the 2002-2003 school year, 60 per cent of primary school places will be offered in whole-day schools. Our longer-term aim is for virtually all primary school students to enjoy whole day schooling from the 2007-2008 school year.

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2/ Through the Kindergarten Fee Remission Scheme.

3/ The "Kindergarten Subsidy Scheme".

Level of subsidy at the senior secondary level

511. As explained in paragraph 341 of the previous report, school fees at this level are set at 18 per cent of recurrent cost 4/. Thus, the level of subsidy is 82 per cent. In cash terms this means that parents pay the fees indicated in the following table:

| Senior secondary level | Standard school fees $ per pupil per school year and (fees as a percentage of the cost of provision) | | | | | |
|---|---|---|---|---|---|---|
| | 1992-93 | 1993-94 | 1994-95 | 1995-96 | 1996-97 | 1997-98 |
| S.4-S.5 | $2,550 (16%) | $3,150 (18%) | $3,500 (18%) | $3,950 (18%) | $4,450 (18%) | $5,050 (18%) |
| S.6-S.7 | $3,300 (11%) | $4,300 (13%) | $5,550 (15%) | $7,100 (18%) | $7,800 (18%) | $8,750 (18%) |

Needy students in public sector schools may apply for remission of half or all of these fees.

Teachers

Remuneration

512. In paragraph 358 of the previous report, we explained that teachers enjoyed an attractive package of pay and benefits. This remains the case. Teachers in government schools have access to housing and other civil service benefits. Those in aided schools have access to a mortgage subsidy. The terms and conditions of teachers in private schools are a matter of private contract.

Teacher quality

513. Current initiatives to improve teaching standards are listed in annex 28.

Teacher education

514. Pre-service programmes are provided by the Hong Kong Institute of Education, the Chinese University of Hong Kong and the University of Hong Kong. These and some other institutions offer in-service programmes. Teachers undertaking such courses at their own expense may receive refunds of between half and full cost.

Quality Education Fund

515. This Fund was established in January 1998 with an initial - publicly funded - capital of HK$ 5 billion. Its main purpose is to support educational

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4/ This is the "benchmark" for government and aided schools. Private schools charge at the rate necessary to cover costs and, in some cases, to make a profit.

research and school based initiatives to develop new curricula and to improve the educational process.

516. The first call for applications was made in March and April 1998. Over 2,300 applications - seeking grants totalling HK$ 2.3 billion - were received. Of these, 522 projects costing HK$ 366 million were approved. A second call will be made on 30 September 1998. The results will be announced in "tranches" from April 1999 and grants will be released from May 1999.

Language policy - biliteracy and trilingualism

517. Over 96 per cent of Hong Kong's population is ethnically Chinese and 94 per cent are first-language Cantonese speakers. Cantonese is the medium of daily communication and the mother tongue of most students. At the same time, Hong Kong is an international business, financial and trading centre, and English is the language of business world-wide. And Putonghua 5/ (also known as "Mandarin") is the language of the sovereign State. Therefore, our policy is that students should be literate in both Chinese and English and be able to speak fluent Cantonese, Putonghua and English.

518. Measures to achieve that objective include:

(a) The establishment of a Language Resource Centre to improve support services;

(b) The continuation of the native English-speaking teacher scheme explained in appendix 22 of the previous report;

(c) "Benchmarks" for language teachers (paragraph 526 below);

(d) Extensive reading and writing schemes in both languages; and

(e) The inclusion of Putonghua as a core subject in the primary school curriculum.

Medium of instruction

519. In paragraphs 378 to 380 of the previous report, we explained that the introduction of the system of nine years universal and free education in 1979 meant that the schools had to accommodate students with a wider range of academic and linguistic ability. Teachers in English-medium schools often found themselves having to use Chinese for explanation and discussion, because of their pupils' inadequate level of English. Teaching in a combination of English and Chinese did help some students. But in most cases it led to time being wasted on translation of English texts in class and, worse, learning being reduced to rote memorization of facts in English.

520. We remain convinced that students learn best in their mother tongue and that most would learn English better if it were simply treated as an important subject and taught well. But, as previously explained, our efforts - and those

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5/ Putonghua - literally "the common tongue" - is the national language of China. But Chinese comprises several "dialects" that are as distinct from one another as are, say, Spanish and Italian.

of schools which have tried to revert to using Chinese - have met with resistance from parents. Nevertheless, we have continued encouraging schools to teach in Chinese, while ensuring that students who have a proven ability to learn effectively in English continue to have the opportunity to do so.

521. To that end - as foreshowed in paragraph 380 of the previous report - schools were advised that, by late 1997, they would have to choose the language of instruction best suited to their students. To help them make informed choices, the Education Department provided them with language proficiency profiles of their past intakes. But they were warned that, from the 1998-1999 school year, schools that continued teaching in a language (or mixture of languages) unsuited to their pupils' ability would be instructed to teach in the appropriate medium.

522. Accordingly, in September 1997, we issued the "Medium of Instruction Guidance for Secondary Schools". Its prescriptions will take effect from the 1998-1999 school year when over 70 per cent (about 300) public-sector secondary schools (government and aided schools) will teach all academic subjects (except English) in Chinese 6/. It will apply first to the Secondary 1 intake, progressing to Secondary 2 in the second year and to Secondary 3 in the third. At that point, we will review the policy before considering its application to Secondary 4.

523. The 300 schools were directed to teach in accordance with the "Guidance" after proficiency assessments (conducted by the Education Department 7/) indicated that their pupils were not capable of benefiting from instruction given in English and that the schools themselves could not adequately deliver such instruction. The assessment process identified 114 schools that were so capable and whose pupils demonstrated ability to benefit from an English-based education. Those schools will continue to use English as the medium of instruction.

524. Some commentators have said that the policy is divisive and elitist. The Government rejects this view. The policy ensures that students are taught in the linguistic medium through which they are best equipped to learn. That, in turn, is their best guarantee of educational attainment and later career progression. The quality of a school cannot be assessed by its medium of instruction: schools that teach in Chinese and schools that teach in English have both produced outstanding students. We fully expect that the mother tongue policy will enable greater numbers of students to perform with distinction.

Teacher education to encourage mother tongue teaching and to improve language teaching standards

525. The Institute of Language in Education was established in 1982 to improve the competence of language teachers and the quality of language teaching and learning in schools. It is now part of the Hong Kong Institute of Education,

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6/ Non-academic subjects, such as Religious Studies may continue to be taught in English.

7/ The assessment was conducted by a vetting committee - whose members were mostly non-officials - and an appeals committee comprised entirely of non-officials.

which was founded in 1994 and, among other things, is responsible for teacher training at the sub-degree level. The trainees are equipped to teach in Chinese. The Institute also offers part-time courses to train serving teachers to teach specific subjects in Chinese. Serving teachers can also attend short, full-time courses in the use of Chinese and English as teaching media.

526. From the 2000-2001 school year onwards, new aspirants to the profession will be required to meet "benchmarks" of language competence in order to graduate as teachers. Serving language teachers will be required to meet those standards by the end of 2005.

Opportunities for ethnic minorities to learn their mother tongue

527. As explained in paragraphs 343 and 344 of the previous report, the Government runs two primary schools and a secondary school that offer other languages to English-speaking minorities. The normal medium of instruction is English. But other languages, such as Hindi, Urdu and French, are taught as subjects. At present, 43 other private international schools offer education in various national curricula such as those of England, France, Germany, Korea, Canada, Japan, Singapore, Australia and the United States. Many of these schools receive government assistance in the form of land grant and/or recurrent subsidies.

Higher education

Admissions policy

528. Admission to the tertiary institutions is on merit. The institutions are autonomous statutory bodies that set and administer their own admission criteria. Admission to degree programmes at the institutions funded by the University Grants Committee (UGC) (see paragraph 530 below) is primarily through the Joint University Programmes Admission System (JUPAS). Admission to their sub-degree programmes is through the Joint Admission Scheme for Post-secondary Institutions' Courses (JASPIC). In both cases, the primary consideration is examination performance. But individual programmes may require additional selection procedures such as interviews. From the 1998-1999 academic year, UGC-funded institutions will admit some students to undergraduate programmes on the basis of excellence in non-academic areas such as community service, arts and sports.

Supply of tertiary places

529. The number of first-year first-degree places has increased from some 5,400 in 1987-1988 to 14,500 in 1997-1998. The percentage of the 17 to 20 age group admitted to first-year first-degree places increased from 6 per cent in 1987-1988 to about 18 per cent in 1997-1998. Another 6 per cent of this age group attend first-year sub-degree courses. The UGC-funded institutions provide 45,000 first degree places, 8,800 post-graduate degree places and about 14,700 sub-degree places (in full-time-equivalent terms).

530. There are 10 tertiary institutions, eight of which are funded by the UGC. Of these, six are fully self-accrediting degree-awarding universities. The other two are Lingnan College: a liberal arts and degree awarding college (which will be self-accrediting by September 1998); and the Hong Kong Institute of Education, a teacher training institution, which will start offering degree and

post-graduate programmes in the 1998-99 academic year. The Hong Kong Academy for Performing Arts (see paragraph 586 below in relation to article 15) also awards degrees. But it is funded directly by the Government, not through the UGC. The Open University of Hong Kong (see paragraphs 536 to 538 below) is self-financing. There are also two technical colleges (funded by the Vocational Training Council) and a privately-funded post-secondary college.

Fees and financial assistance for students

Tuition fees for UGC - funded institutions

531. In paragraph 349 of the previous report, we explained that the Government's policy was to set the tuition fees for degree programmes at the UGC-funded institutions at the level necessary to recover 18 per cent of the average unit cost per student. The aim was to ensure that students and the community shared a reasonable balance of the cost of their education. We achieved this target in the 1997-1998 academic year. In 1997-1998, the tuition fees for publicly funded sub-degree and degree courses were $31,575 and $42,100 respectively. These will remain at these levels in 1998-1999.

Financial assistance for tertiary students

532. It remains the Government's policy that no qualified student is denied access to tertiary education because of a lack of means. The Student Financial Assistance Agency administers various financial assistance schemes for tertiary students and privately funded scholarships awarded on the basis of academic merit. Details of these are provided in annex 29.

Access for non-Chinese speakers

533. Most tertiary institutions require Advanced Level (matriculation) passes in Chinese and English. This will be mandatory for most applicants from the 1998-1999 academic year. But non-Chinese-speakers have - and will retain - access to tertiary education as most programmes will accept applicants who offer an alternative second language (such as French).

Adult education

Local opportunities for adult education

534. The Education Department runs primary and secondary level courses and an English course for residents aged 15 or above. As at 30 June 1998, over 10,500 students were attending such courses.

535. The Department subsidizes programmes run by NGOs. Examples include basic literacy in Chinese, Cantonese for newcomers to Hong Kong, pre-vocational training, job-oriented courses, special education for disabled adults, and pre-retirement/retirement education.

Continuing and professional education at the tertiary level

536. A UGC review of higher education conducted in 1996 indicated that about 320,000 people (10 per cent of the working population) were pursuing some form of continuing and professional education at the tertiary level. One of the major

providers is the Open University of Hong Kong (OUHK), formerly known as the Open Learning Institute. The OUHK became the seventh university in 1997.

537. As explained in paragraphs 352 and 353 of the previous report, the Open Learning Institute was founded in 1989 to provide a second chance for persons who, for various reasons, had missed the opportunity of studying in conventional tertiary institutions. It also provided an opportunity for those wishing to study in their own time for personal interest and self-development. In its new "incarnation" as a university most of the OUHK courses continue to be "open" in the sense that there are no formal entry qualifications (though students must be literate and numerate). As before, teaching is by distance learning but with complementary face-to-face classes. Fees continue to reflect the cost of delivery and currently average about $19,000 a year 8/.

538. There were over 22,900 students enrolled in 1997-1998 (20,800 for the 40 degree programmes and 2,100 for the 24 sub-degree programmes). The OUHK also offers 280 short courses (including vocational upgrading for professionals such as nurses and teachers, and evening classes in such subjects as languages and computing). These attracted over 6,000 students in 1997-1998.

Other providers of continuing education

539. The continuing and professional education units of the UGC-funded institutions are also significant providers. So too are non-local institutions that currently provide over 430 programmes. These broaden the choices available to Hong Kong people and enable them to obtain overseas qualifications without the need to study in the provider countries. The Non-local Higher and Professional Education (Regulation) Ordinances (Chapter 493) - effective since June 1997 - protects the public against the marketing of sub-standard programmes. Distance learning programmes conducted entirely through telecommunication or mail from outside Hong Kong - and the sale of materials to the general public in the course of business - are exempt from regulation under the Ordinance. This is with regard to the right to freedom of expression.

Vocational training and re-training

540. The Vocational Training Council (VTC) is the main provider of - and adviser to the Government on policies relating to - vocational training. Inter alia, its two technical colleges, seven technical institutes and 24 industrial training centres provide post-secondary technical education, industrial skills training, apprenticeships, traineeships and vocational training for people with disabilities.

541. In the 1997-1998 academic year, the VTC technical institutes provided a total of 13,716 full-time, 12,000 part-time day-release and 23,688 part-time evening places. There were also 12,700 short-course places. The two technical colleges offered 5,075 full-time, 1,256 part-time day-release and 7,641 part-time evening places. The 24 industrial training centres offered 48,968 full-time and part-time places. Enrolment statistics for 1997-1998 by mode of study and level are provided in annexes 30 and 31.

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8/ Fees are charged per course unit. Most students take 20 units a year, this being half the rate expected of full-time students. The average fee is the cost of 20 units.

542. The Construction Industry Training Authority and the Clothing Industry Training Authority provide pre-employment and further training for operatives, craftsmen and technicians in their respective industries. The Employees Retraining Board provides courses for displaced workers aged 30 or above.

Apprenticeship

543. The Apprenticeship Ordinance (Chapter 47) governs the training and employment of apprentices in designated trades with a view to ensuring that they receive systematic training and assistance in matters concerning their employment. Persons aged between 14 and 18 who are employed in such trades and have not completed apprenticeships must enter into contracts with their employers. Such contracts must be registered with the Director of Apprenticeship. Some 3,580 contracts were registered in 1997. These contracts covered 2,809 craft apprentices and 771 technician apprentices. At the end of 1997, some 7,938 apprentices were under training.

Education for students with disabilities

Primary and secondary school education for disabled children

544. As explained in paragraphs 359 and 360 of the previous report, children with special needs are encouraged, and given appropriate support, to receive education in ordinary schools as far as possible. Annex 32 sets out the recognized definitions of the various forms of disability. Annex 33 lists the support services provided to disabled children studying in ordinary schools.

545. Children with more complex needs, or whose disabilities are so severe that they cannot benefit from education in the mainstream, receive free and compulsory general education in special schools up to the junior secondary level. Children with physical or sensory impairment receive a minimum of nine years' education. Mentally handicapped children receive 10.

546. Disabled children who are capable of pursuing academic studies have access to senior secondary education (Secondary 4 and Secondary 5) in ordinary or special schools depending on their needs. Those who are not academically inclined have access to vocational training. The supply of and demand for the various types of special schools are indicated in annex 34.

Way forward

547. In September 1997, the Education Department initiated a two-year pilot project to test ways of empowering ordinary school personnel to participate more fully in the integration progress. The project - which is essentially a control study - covers nine schools and 48 integrators. We will review it in 1999 and will draw on the experience gained to formulate a long-term strategy for the more effective integration of students with special education needs into ordinary schools.

Disabled persons: accessibility of school buildings

548. As explained in paragraph 361 of the previous report, all new schools planned for completion in May 1997 and thereafter will be purpose-designed to ensure easy access for disabled children. Steps have been taken to make the

school environment more accessible where this is technically feasible and cost-effective.

Access to tertiary education for students with disabilities

549. As explained in paragraph 528 above, admission to tertiary institutions is entirely on merit. In 1997, to maximize opportunities for students with disabilities - and to offset to some extent, the special difficulties some of them have to overcome - the universities created a new sub-system under the JUPAS programme (see paragraph 528 above) for the admission of disabled students to bachelor degree programmes. The sub-system is essentially a means of establishing contact between disabled applicants and the institutions. That is, it enables the applicants to establish at an early date what assistance and facilities are available to them at the institutions of their choice. And it helps the institutions to establish how many potential students are disabled - and in what ways - so enabling them to advise such applicants what forms of help they can provide. Candidates applying through the sub-system do not compete with other JUPAS applicants but they are required to meet the prescribed minimum entry requirements for the respective courses. Applicants who receive offers under the sub-system are not obliged to accept them immediately. Their applications will continue to be considered with those of other applicants with a view to the possibility of more attractive offers. A total of 20 such applications were received in 1998. Five received offers under the sub-system and an additional four subsequently received offers under the main JUPAS exercise 9/.

550. Once students with disabilities are admitted, the institutions arrange counselling, special study and examination facilities, and financial assistance where possible and appropriate. These are tailored to the needs of individual students with regard to their particular disability and their field of study.

551. Over the two years 1998-1999 and 1999-2000, the tertiary institutions will receive a total of $ 28 million to pay for major capital works and to improve facilities for disabled students.

Special vocational training programmes for persons with a disability

552. Skills centres operated by NGOs and the VTC offer vocational training, retraining and guidance for people with disabilities: 953 full-time places in the 1997-1998 academic year. The VTC also offers short courses on a flexible, modular basis to cater for the special needs of disabled people. The programmes are regularly reviewed and revised to respond to the changing demands of the job market.

Vocational assessment service for the disabled

553. This VTC operated service follows established international vocational assessment procedures for the formulation of placement plans for people with disabilities.

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9/ We have considered a similar mechanism under the JASPIC. But the number of disabled persons applying for sub-degree programmes is too small to warrant the creation of a discrete sub-system.

554. The service is complemented by the Government's "Employees' Retraining Scheme" which equips displaced workers aged over 30 - including those with disabilities - with new skills that will help them to re-enter the job market.

Education of prison inmates

555. The Correctional Services Department employs qualified teachers and instructors to provide general education and vocational training on a half-day basis for Training Centre inmates and prisoners aged under 21. Details are given in annex 35. Guidance is provided to other prisoners sitting public examinations.

Prisoners' Education Trust Fund

556. The Fund was established in December 1995 under the Prisoners' Education Trust Fund Ordinance (Chapter 467). It provides facilities for prisoners who wish to study and financial assistance to needy prisoners pursuing post-primary education.

Education for children of Vietnamese asylum seekers

557. Vietnamese asylum seekers who have been determined to be refugees pending resettlement overseas live in an open centre (Pillar Point) run by the Office of the United Nations High Commissioner for Refugees. So, too, do most of those who have been determined to be non-refugees and have been released on recognizance. All have access to social and educational services provided there by UNHCR and by designated NGOs.

558. Residents of the open centre are free to live outside it, to seek employment and obtain other services in the same way as Hong Kong residents. From September 1998, their children will be encouraged to attend local schools.

559. The subject of Vietnamese asylum seekers is discussed in greater detail in paragraphs 156 to 172 of ICCPR1 in relation to article 9 of that Covenant.

Education of mainland children pending verification of residential status

560. Mainland children who have no legal right to remain in Hong Kong are not allowed to enrol in local schools. However, pending verification of their residential status, they may be admitted temporarily on a case-by-case basis. As at 30 June 1998, about 1,200 such children had been so admitted.

Education for newly arrived children/young people from mainland China

561. In paragraph 44 of its concluding observations on the previous report, the Committee recommended that "measures to integrate children of immigrant families from China into the general education system be implemented with maximum possible attention from government authorities". The recommendation accords with government policy.

562. Newly arrived children are entitled to receive the same educational services and support as local students. They also have access to remedial services such as educational and personal guidance and remedial teaching in Cantonese, English and Mathematics. They are also eligible to apply for the

various types of financial assistance provided by the Government if they meet the relevant criteria.

563. In 1997-1998, the Government introduced a block grant system to help public sector schools provide school-based support services to these children. The grants are given at the rate of $2,000 per child at the primary level and $3,330 at the secondary level.

564. The Education Department has set up a Central Placement Unit which works closely with the District Education Offices to help newly arrived children secure school places. Those aged six to 15 are quickly enrolled. To help them to integrate into the local education system, the Department has issued curriculum guidelines to schools on Chinese Language, English Language and Mathematics. It has also formulated a testing system to help schools assess the standards that newly arrived applicants have attained in these subjects. The tests also enable the schools to determine the level of entry (class) appropriate to each such child.

565. The Department also provides placement assistance on request to young new arrivals aged over 15. Alternatively, they can attend craft courses run by the technical institutes of the VTC or adult educational courses run by the Department and NGOs. The minimum age for admission to adult education courses was lowered from 18 to 15 in September 1996.

Way forward

566. The arrival of these children has generated increased demand for school places. We expect that trend to continue. With that in view, we are constructing new schools to ensure that there are sufficient places to meet demand. Seven new primary schools have started operation in the last two years and nine new secondary schools are being built: these will be ready in the 1999-2000 school year. Another 16 new schools (six primary and 10 secondary) will be ready by the commencement of the 2001-2002 school year.

Civic education, human rights education and education against discrimination

School curriculum and other measures

567. As explained in paragraphs 326 to 332 of the previous report, civic education, human rights education and education against discrimination are an integral part of the curriculum and are addressed in a wide range of subjects. The coverage remains essentially as previously reported though, as foreshadowed in paragraph 332 of the previous report, the new subject "General Studies" now covers topics on understanding the needs of persons with disabilities, rehabilitation services and positive attitudes towards the needy. The extra-curricular programmes previously described continue. These include programmes to encourage communication and development of relationships between disabled and able-bodied children (the "Sister School Scheme", "Pick your Friend" and "Opportunities for Youth Scheme").

568. In the 1996-1997 school year, the Government introduced a new curriculum framework in its "Guidelines on Civic Education in Schools". This covers human rights and education against discrimination. From 1998-1999, "civic education" will be offered as a specific subject at the junior secondary level. That, too, addresses human rights and discrimination.

569. The Education Department is conscious of the need not to condition children to gender-biased aspirations. The policy is to promote equality for students of both sexes 10/. Schools are encouraged to offer all subjects in the curriculum to both female and male students. Mutual respect and equality between the sexes are fundamental values promoted in subjects such as Social Studies, Religious Studies and Liberal Studies at the secondary school level, and General Studies at the primary school level.

Life education

570. "Life education" is a term applied to education about such matters as sex and drugs. These are integral parts of the Social Studies curriculum at the secondary level and of the General Studies curriculum at the primary level. As previously reported (paragraph 340 of the previous report) some commentators maintain that subjects of this type should be taught as a discrete part of the curriculum. The Government's position remains that the curriculum is wide-ranging, "integrated" and presents what some might call a "holistic" view of the world. It also remains overcrowded. Adding new subjects (except on a voluntary basis) can only increase the already demanding workload that students are expected to shoulder.

Programmes for teachers

571. The Education Department regularly organizes civic education seminars for teachers. In 1997 and 1998 there were four seminars on human rights-related themes, namely anti-discrimination, freedom, "traditional Chinese values and modern citizenship" and intellectual property. Over 350 teachers attended. These efforts are continuing.

572. For 1998, the Department has commissioned intensive in-service teacher training programmes on civic education. These are run on the Department's behalf by two tertiary institutions and include modules on "Human Rights and Civic Education". Human rights themes are also included in at least three other modules. The courses are free of charge. Similar courses will be run in 1999.

Public education on rehabilitation for the disabled

573. In paragraphs 333 to 336 of the previous report, we explained the work of the Committee on Public Education on Rehabilitation (COMPERE). In January 1996, the COMPERE was replaced by the Sub-Committee on Public Education on Rehabilitation under the Rehabilitation Advisory Committee. The Sub-Committee monitors, coordinates and evaluates public education activities that seek to:

Reduce the incidence of disabilities;

Develop the physical, mental and social capabilities of the disabled to the fullest extent possible; and

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10/ At the time of finalizing this report, concerns were being expressed that admissions to secondary schools were biased against girls. While not all educationalists agreed that this was the case, the Education Department is now investigating the matter. The Equal Opportunities Commission will also look into the matter. Should they discover that such biases exist, measures will be taken to rectify the situation.

Promote a better understanding of the disabled and the importance of their integration into the community.

Between 1994-1995 and 1997-1998, government funds and donations totalling about HK$ 45 million were spent on these activities. Our efforts in this area will continue.

The work of the Equal Opportunities Commission

574. Since commencing full operation in September 1996, the Equal Opportunities Commission (EOC) has been undertaking public education programmes to promote equality for disabled people, between the sexes, and for people of different family status. Details of the programmes are provided in annex 36. The work of the EOC is also explained in paragraphs 23 to 26 of ICCPR1, in relation to article 2 of that Covenant.

Human rights education outside schools

575. The Committee on the Promotion of Civic Education (CPCE) has continued its ongoing work to organize and sponsor educational and publicity programmes to foster community awareness of the rights of the individual, equal opportunities and the protection of data privacy. To ensure that citizens are familiar with their constitutional document, the CPCE has been working to promote awareness and knowledge of the Basic Law, which is Hong Kong's constitutional guarantee for the protection of human rights. To this end, in 1998-1999, the CPCE will spend over $10 million to produce educational materials, CD-ROM, television and radio programmes to promote human rights and the Basic Law. But the promotion of the Basic Law goes beyond the work of the CPCE and other efforts in this regard are discussed in paragraph 576 below.

Basic Law Promotion Steering Committee: public education on the Basic Law

576. Because the Basic Law is our constitutional document - and because it enshrines the human rights protections and the civic liberties of all Hong Kong residents - the Government accords high priority to ensuring that all our people know about and understand it. We have discussed the work of the CPCE in paragraph 575 above. But the Basic Law is also covered in the school curriculum (see paragraph 578 below) and in civil service training. Additionally, community-based organizations and individuals promote the Basic Law on a district/local basis.

577. In January 1998, the Basic Law Promotion Steering Committee, comprised of both official and non-official members, was established under the chairmanship of the Chief Secretary for Administration. Its task is to direct the overall strategy for promoting the Basic Law. These efforts will be directed at the local community, teachers and students, the civil service, and the overseas "audience" including visitors to Hong Kong.

School curriculum and other measures

578. It is important that all teachers and students in Hong Kong have at least a basic understanding of the Basic Law. As with other forms of human rights education (see paragraph 567 to 575 above), the approach has been to spread "delivery" through the curricula as a whole. That is, primary school students learn about the Basic Law through the subject called "General Studies".

Secondary school students do so through Social Studies, Economics and Public Affairs, History, Government and Public Affairs and Liberal Studies. The topic will also be covered in the new discrete subject "Civic Education", which will be available from September 1998. Schools are also encouraged to initiate extra-curricular activities - such as inter-school competitions - to familiarize students with their constitutional document.

579. To ensure that teachers have the knowledge and skills necessary to teach the Basic Law, the Education Department has organized a series of seminars on the topic: six in 1997 and 1998. Also in 1998, two tertiary institutions - commissioned by the Department - have conducted intensive courses on civic education for primary and secondary school teachers. These included modules directly related to the Basic Law. These courses will continue in 1999. The Education Department also provides support to educational organizations in running seminars on day camps on the Basic Law for teachers. Four of these events were organized in 1997 and 1998.

## Article 14
## Free and compulsory primary education

580. The provision of free and compulsory primary education and also of secondary education is discussed under article 13.

## Article 15
## Right to cultural life, scientific progress and its application

581. Article 34 of the Basic Law provides that Hong Kong residents shall have freedom to engage in academic research, literary and artistic creation, and other cultural activities. Article 27 provides, among other things, for the freedom of speech, of the press and of publication. Articles 139 and 140 provide that the HKSAR Government shall, on its own, formulate policies on science and technology and on culture. Legal protection is also provided for achievements in these areas. Article 144 further provides for the Government to maintain the policy previously practized in respect of subventions for non-governmental organizations in fields including culture and art.

### Policy on culture

582. The Government's policy is to create an environment that is conducive to freedom of expression and artistic creation and that encourages free participation in all aspects of cultural life. Those freedoms are subject only to measures to prevent dissemination of material deemed likely to incite hatred, result in a breakdown of law and order, or gravely damage public health or morals. The copyright of creative works of artists is protected by law.

583. As explained in paragraph 389 of the previous report, the Government attaches great importance to developing a rich cultural life embracing the arts and traditions of both east and west. The Government sees its role as a provider of the necessary infrastructural support, particularly in building cultural venues and in financing the arts. To this end, it has developed a partnership with the major arts bodies, which include the Provisional Municipal Councils (see paragraphs 594 to 601 below), the Hong Kong Arts Centre, the Hong Kong Arts Development Council and the Hong Kong Academy for Performing Arts. In 1997-1998, the Government and the Provisional Municipal Councils spent over HK$ 2 billion on cultural activities.

Hong Kong Arts Development Council

584. As explained in paragraph 395 of the previous report, the Council was established in April 1994 on the recommendation of the 1993 arts policy review. It became an independent statutory body in June 1995 when the Hong Kong Arts Development Council Ordinance (Chapter 472) was enacted. The Ordinance defines the HKADC mission as being to:

> "plan, promote and support the broad development of the arts, including the literary, performing, visual and film arts, and to develop and improve the participation and education in and the knowledge, practice, appreciation, accessibility and informed criticism of the arts, with a view to improving the quality of life of the whole community."

The Council discharges its functions and duties through an independent secretariat. As previously reported (paragraph 398), its meetings remain open and all discussion papers and minutes of meetings continue to be available to the public. It also runs an Arts Information Centre and issues newsletters.

585. The Council is now working to the Strategic Plan foreshadowed in paragraph 396 and 397 of the previous report. This provides a blueprint for work in the Council's planning, developing, promoting and supporting of the arts over the five years from 1996 to 2001. The Government is working closely with HKADC to carry this programme through.

Hong Kong Academy for Performing Arts

586. The Academy was established in 1984 "to foster and provide for training, education and research in the performing arts and related technical arts 1/". It became a degree awarding body in 1992. Its five schools (Dance, Drama, Film and Television 2/, Music and Technical Arts) have produced over 2,000 graduates since the Academy's inception. Many of them have pursued careers as professional artists and have contributed much to the performing arts in Hong Kong.

Antiquities and Monuments Office

587. The Office is responsible for the preservation and conservation of human heritage in Hong Kong. It is advised by the Antiquities Advisory Board and carries out restoration and conservation programmes, conducts archaeological surveys and excavations, and promotes public awareness and interest in Hong Kong's heritage.

588. Buildings of historical value are declared or deemed to be monuments for protection and preservation. Archaeological sites are preserved or excavated to salvage relics of Hong Kong's historical and prehistorical past. As at 30 June

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1/ Section 3(2) of the Hong Kong Academy for Performing Arts Ordinance (Chapter 1135).

2/ Film and television were formerly offered by the School of Technical Arts. The School of Film and Television was formed in 1996-1997.

1998, there were a total of 66 declared monuments 3/ and eight deemed monuments 4/. The public has free access to most of them.

589. The Office is conducting two territory-wide surveys of historical buildings and archaeological sites with a view to updating the inventory of items of historical and archaeological interest. It expects to complete these in late-1998.

590. In 1997, the Office, the Antiquities Advisory Board and the Lord Wilson Heritage Trust jointly organized a project entitled the "Year of Heritage". This was to commemorate the 20th anniversary of the enactment of the Antiquities and Monuments Ordinance (Chapter 53) and the establishment of the Antiquities Advisory Board. The programme included an International Conference on Heritage and Education, heritage tours, exhibitions, lectures and archaeological workshops. The focus was on promoting public awareness of the importance of heritage conservation.

Archives

591. The Public Records Office of the Government Records Service is responsible for preserving public records of historical value and for operating the public records system. It has the largest collection of historical documents (public records, books, maps and photographs) in Hong Kong. Generally, less than five per cent of government records warrant archive preservation. Most public records are open to public inspection when they are 30 years old. But the Chief Secretary for Administration may approve exceptions to which longer periods apply. Access to public records is free of charge and copies of most documents can be made at a cost.

592. The Office is now housed in a purpose-built building completed in June 1997. This provides fully acclimatized facilities for storing and preserving historical records. An automated archival search-aid system assists users to find and order records.

593. A Public Education and Publicity Programme has been launched to promote public awareness of - and interest in - Hong Kong's historical heritage.

The Provisional Municipal Councils

594. The Provisional Urban Council and the Provisional Regional Council are the HKSAR's major providers of cultural facilities. In paragraph 401 of the previous report, we explained that the Councils had opened several performing venues in

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3/ "Declared" monuments are places, buildings, sites or structures which are declared, by notice in the gazette - at the recommendation of the Antiquities Advisory Board, with the approval of the Chief Executive - to be monuments, historical buildings or archaeological or palaeontological sites or structures by virtue of section 3 of the Antiquities and Monuments Ordinance (Chapter 53).

4/ A "deemed monument" is a building or site that - on the recommendation of the Antiquities Advisory Board and with the approval of the Chief Executive - can be restored, repaired and maintained at public expense. But it is not subject to the statutory protection accorded to declared monuments.

the past decade. That work continues and the Provisional Regional Council is now building two new performance venues in Kwai Tsing and Yuen Long (respectively in the western and north-western New Territories). These are scheduled for completion in 1999-2000. Non-profit making organizations and district organizations have access to the Councils' facilities at reduced charges.

595. The Provisional Municipal Councils also provide cultural programmes of Chinese and Western music, opera, drama, dance and film featuring both local and overseas artists from many different countries and cultural backgrounds. They also present year-round entertainment programmes and host festivals such as the annual Hong Kong International Film Festival, the International Arts Carnival, the International Children's Arts Festival, the biennial Regional Council Festival, the biennial Festival of Asian Arts and the biennial thematic Festivals on Chinese arts. A Chinese Opera Festival, in which 18 visiting and 26 local performing groups participated, was organized in 1997.

596. The Provisional Urban Council manages the Hong Kong Chinese Orchestra, the Hong Kong Dance Company and the Hong Kong Repertory Theatre. It also provides funding support to the Hong Kong Philharmonic Society, the Hong Kong Arts Centre, the Hong Kong Arts Festival Society and the Hong Kong Festival Fringe.

597. Both Councils support local artists/art groups by presenting and sponsoring their programmes, for example:

(a) The "Cultural Ambassador" schemes: artists are invited to bring the arts to sectors of the community that do not normally attend cultural events;

(b) The "Artist-in-Residence" schemes: performing artists of established repute are invited to stage extended performances, exhibitions and so forth at civic centres under the management of the Councils. The aim is to foster the development of a rapport between artists and audience;

(c) The "District Arts Support" scheme: this supports cultural activities at the "grassroots" level. Non-profit making organizations have access to direct subsidies and the free use of Council venues; and

(d) Animateur schemes: the Councils collaborate with various arts professionals to organize demonstrations, workshops and rehearsals for students.

598. The Provisional Regional Council has set up a Public Art Fund with an initial provision of $47 million for commissioning or procuring works of art for display at the Council's public venues. At least half of this amount will be used to support the work of local artists.

Libraries

599. The Provisional Municipal Councils' 65 libraries are free to the public. The public library homepages of the two Councils are linked and are available on the Internet. They provide up-to-date information on library services and access to their respective catalogues. Mobile libraries and block loans cater for the needs of schools, organizations and people living in remote areas. The Provisional Urban Council's Hong Kong Central Library, with an area of 33,800 m, is under construction and is scheduled for completion in 2000.

Museums

600. The Provisional Municipal Councils provide museums for the education and enjoyment of the public. Admission is either free or with low fees, with concessions for senior citizens, students and group visits. Construction of three new museums - a replacement for the old Hong Kong Museum of History, the Hong Kong Heritage Museum and the Hong Kong Museum of Coastal Defence is in progress. They are scheduled for completion in 1999-2000.

601. The Provisional Urban Council is constructing a film archive to preserve Hong Kong's film heritage. This is scheduled for completion in 2000.

Processing of applications to use venues of the Provisional Municipal Councils

602. The Provisional Municipal Councils provide places and facilities - such as parks - for recreation and relaxation. In May 1997, the Urban and Regional Services Departments (the executive departments serving the two Councils) received separate applications from an NGO for the use of their parks (two managed by the then Urban Council and the other by the then Regional Council) for the display of the sculpture known as the "Pillar of Shame" 5/ for a period of three months. They also wished to stage an exhibition on the history of the 4 June 1989 incident in China.

603. These requests were debated - and rejected - by both Municipal Councils. Some commentators consider that these decisions infringed the freedom of artistic expression in relation to article 15 and the general freedom of expression under article 19 of the ICCPR.

604. The Government does not share this view. The Provisional Urban Council reached its decisions having considered all relevant factors, including the fact that the dates applied for clashed with events sponsored by other applicants that the Council had already approved. The Council was also concerned that the presence of the sculpture and related display boards would inconvenience park users and would be inconsistent with the primary use of the parks. The discussions in both Councils were held in open debate in accordance with democratic processes. That there was no suppression of freedom of expression is clearly demonstrated by the Provisional Urban Council's approval - in 1997 and 1998 - of applications by the same NGO to stage a candlelight vigil in memory of the 4 June incident. The "Pillar of Shame" was displayed during that event.

Science and technology

Policy on promotion of science and technology

605. Article 139 of the Basic Law provides that the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on science and technology and protect by law achievements in scientific and technological research, patents, discoveries and inventions.

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5/ The "Pillar of Shame" is a sculpture by a Danish artist in memory of the 4 June 1989 incident in China. It was donated to the Hong Kong Alliance in Support of the Patriotic and Democratic Movement in China (an NGO).

The role of the Government

606. The Government encourages the development of high technology and high value-added business in Hong Kong. It facilitates technology transfer and development through the provision of appropriate infrastructure, human resources, funding support and other programmes. Infrastructural support includes the provisions of industrial estates and such institutions as the Hong Kong Productivity Council 6/ and the Industrial Technology Centre 7/. Projects currently in train include a Science Park 8/ and a second Industrial Technology Centre. Funding support is provided mainly through the Industrial Support Fund 9/, the Applied Research Fund 10/ and the Services Support Fund 11/.

607. The Government also engages in international science and technology exchanges through its participation in the Industrial Science and Technology Working Group of the Asia-Pacific Economic Cooperation and the Science and Technology Task Force of the Pacific Economic Co-operation Council.

Role of the Research Grants Council

608. The Research Grants Council was established in 1991 to advise the Government, through the University Grants Committee, on the needs of the higher education institutions in Hong Kong in respect of academic research, including the identification of priority areas. The intention was to develop a research base adequate for the maintenance of academic vigour and pertinent to the needs of Hong Kong. The Council provides grants for research projects on a competitive basis. Between 1991-1992 and 1997-1998, the funds available to the Council for this purpose have increased from $100 million to $423 million. The grants are allocated to research projects divided broadly into four major disciplines: Engineering; Biology and Medicine; Physical Science; Humanities, Social Science

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6/ The Hong Kong Productivity Council promotes industrial productivity and the efficient utilization of resources.

7/ The Industrial Technology Centre facilitates the promotion of technological innovation and the application of new technologies in Hong Kong industries.

8/ The Science Park will provide infrastructural support to foster the development of technology-intensive, high value-added industries.

9/ The Industrial Support Fund provides support to industrial projects that are likely to benefit the industrial and technological development of Hong Kong.

10/ The Applied Research Fund provides support to technology ventures and applied research and development activities that have the potential to yield commercially exploitable results.

11/ The Services Support Fund provides financial support for projects that are beneficial to the overall development of Hong Kong as a service centre or that contribute to the further development of one or more service sectors.

and Business Studies. The distribution is roughly 38 per cent; 27 per cent; 16 per cent and 19 per cent respectively.

609. The Council's Co-operative Research Centres Scheme - established in 1993 - encourages university-industry collaboration in research. It also operates joint research schemes with the United Kingdom, Germany and France in partnership with the British Council, the German Academic Exchange Service and the French National Centre for Scientific Research respectively. These schemes increase academic exchanges and collaboration in research between academics in Hong Kong and their counterparts overseas, so helping to develop a local culture of research and enquiry.

Prevention of the use of scientific/technological developments for purposes contrary to the enjoyment of human rights

610. As explained in paragraphs 405 to 406 of the previous report, the Government is aware of the need to prevent the use of scientific and technical progress for purposes contrary to the enjoyment of human rights. Article 3 of the BOR - which gives effect in domestic law to article 7 of the ICCPR - provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, it prohibits the subjection of persons to medical or scientific experimentation without their free consent. Additionally, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment applies to the HKSAR: our report under that Convention is to be submitted to the Committee against Torture as part of China's third report.

Data privacy protection

611. Developments in information technology and the resulting widespread usage of computers and telecommunication equipment mean that personal data can now easily be collected, accessed and processed. This poses a threat to the individual's right to privacy in respect of personal data. As part of his statutory functions, the Privacy Commissioner for Personal Data - an independent statutory authority appointed under the Personal Data (Privacy) Ordinance of August 1995 12/ - has been conducting studies on the impact of such developments in relation to that right. In this respect, his Office has issued guidelines on the protection of personal data privacy on the Internet.

Council on Reproductive Technology

612. In paragraph 407 of the previous report, we explained that, in 1993, we published for public comment recommendations made by the Committee on Scientifically Assisted Human Reproduction for the regulation of the practice of reproductive technology. At the time of submitting the previous report, legislation was being drafted to establish a Council on Reproductive Technology. This was to be a regulatory, licensing and monitoring body with authority over all medical treatment or scientific intervention directed at assisting human reproduction by artificial means (including in vitro fertilization, artificial insemination, sex selection and manipulation of gametes or embryos outside the body). The legislation is now at an advanced stage, pending its enactment, a

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12/ See paragraph 307 of ICCPR1 in relation to article 17 of that Covenant.

Provisional Council on Reproductive Technology was appointed in December 1995 to advise on the drafting of the Human Reproductive Technology Bill and of a related Code of Practice. The bill - which will formally establish the Council proper - will be introduced into the Legislative Council in September 1998.

Protection of intellectual property rights

613. All the major international treaties and conventions on intellectual property rights that applied to Hong Kong on or before 1 July 1997 continue to do so 13/. As a member of the World Trade Organization (WTO) under the name "Hong Kong, China", the HKSAR complies with all the provisions in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) (TRIPS) 14/. The HKSAR regularly participates in international fora on intellectual property.

614. The Government affords protection to intellectual property rights through the common law system and through its statutes on Copyright, Patents, Registered Designs, Trade Marks, Layout-designs (Topography) of Integrated Circuits and New Plant Varieties. All are fully compatible with the TRIPS Agreement.

615. The Government's Intellectual Property Department monitors the development of local and international trends in relation to intellectual property and tenders legal advice on the formulation of policies commensurate with the best international standards. It promotes public awareness of the protection of intellectual property rights and maintains the Trade Marks, Patents and Designs Registries and provides services in relation to the registration and maintenance of registrable intellectual property rights.

616. The Customs and Excise Department enforces the criminal aspects of intellectual property protection. It has powers of seizure and arrest, and investigates complaints alleging copyright piracy and trade mark counterfeiting or false trade descriptions for commercial purposes. It also collaborates with enforcement authorities in other jurisdictions and with intellectual property rights owners in taking enforcement action against infringements.

Settlement of disputes

617. Disputes over intellectual property rights are normally settled in the courts. The Copyright Tribunal is a statutory and quasi-judicial body under the Copyright Ordinance empowered to adjudicate disputes over royalty and licence payments for the collective administration of copyright. It is also empowered to determine disputes involving the commercial exploitation of commissioned works or works by employees. Appeals on points of law can be made from the Tribunal to the Court of First Instance.

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13/ These conventions include the revised Paris Conventions for the Protection of Industrial Property (1883-1967), the revised Berne Conventions for the Protection of Literary and Artistic Works (1886-1948), the revised Universal Copyright Conventions and Protocols (1952-1971) and the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms (1971).

14/ Those provisions have been in force in Hong Kong since December 1996, three years ahead of the WTO deadline of January 2000.

Establishment of the Information Technology and Broadcasting Bureau

618. The Information Technology and Broadcasting Bureau was established in April 1998 in recognition of the growing importance of information technology (IT) and, of the increasing convergence of the technologies relevant to IT, telecommunications and broadcasting. The Bureau formulates policies in relation to broadcasting and telecommunications. It is also responsible for promoting the wider use of IT throughout government and in the community.

Country parks and conservation areas

619. Although Hong Kong is one of the most densely populated areas in the world, 38 per cent of its land area is designated country parkland. There are three designated marine parks and extensive tracts of land outside the designated country parks are protected as countryside conservation areas, green belts or sites of special scientific interest. The Mai Po marshes and supporting habitat in Deep Bay - important nesting grounds for migrating birds - have been designated under the Ramsar Convention 15/ as a "wetland of international importance". These areas are important for the environmental health of Hong Kong. They provide opportunities for outdoor recreation and environmental education. And they serve to conserve soil and water. Major programmes of afforestation have been carried out and the area under forest cover has greatly increased over the last 50 years. Despite the pressures of human development, the 1,095 square kilometres of Hong Kong's land area continue to support more biodiversity than, for example, the whole of the British Isles.

## Article 16
## Submission of report

620. In compiling this report, the Government sought the views of legislators, NGOs and interested members of the public.

621. In accordance with established practices, the method of consultation was to publish an article-by-article outline of the topics that we proposed to cover. Respondents were asked to comment on the implementation of the Covenant in relation to these topics and to draw attention to any additional issues that they considered we should include. We have addressed their comments as appropriate in the sections relating to the relevant articles.

622. The consultations took place between March and April 1998 over a period of five weeks. During that period, the Government drafting team met NGOs and others to discuss the issues and to exchange views on the consultation process. Again in accordance with established practices, the report will be published - in bound, bilingual format - after its submission to the Committee.

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15/ The Convention on Wetlands of International Importance, commonly referred to as the "Ramsar Convention", was first signed in 1971 in the Iranian town whose name it now bears. Its aim is to halt the world-wide loss of wetlands and to conserve, through wise use and management, those that remain. Initially, there were 18 signatories. Now, there are about 100, including China.

Circulation of concluding observations of the Committee

623. In paragraph 45 of its concluding observations on the previous report, the Committee recommended that copies of its concluding observations should be made widely available and be provided to all members of the judiciary and to the relevant echelons of the public service. In February 1997, in accordance with established practice, copies of the concluding observations were sent to all judges and judicial officers as well as to legislators, NGOs and other interested parties.

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